15-7-212

RECORD, CASE No. 14,639.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~1166~~. 7 of 2 ~~4~~ 5 of 16

LUCIEN BAKER, APPELLANT,

vs.

SAMUEL N. WOOD, GEORGE TAYLOR, ADMINISTRATOR OF N. P. SEELEY, DECEASED; E. M. HULBURD, AND DANIEL E. PARKS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED MAY 13, 1891.

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1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 23rd day of October, A. D. 1886, came Lucien Baker, by Clinton Reed, his solicitor, and filed in said court his bill of complaint and sued out of and under the seal of said court a subpœna in chancery against E. M. Hulburd, Daniel E. Parks, N. P. Seely, and Samuel N. Wood. And the said bill is in words and figures as follows, to wit:

Bill of Complaint.

In the Circuit Court of the United States for the District of Colorado.

LUCIEN BAKER, Complainant,
vs.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELY, and SAMUEL N. WOOD, Defendants.

To the honorable the judges of the circuit court of the United States for the district of Colorado:

Lucien Baker, of Leavenworth, in the State of Kansas, and a citizen of the State of Kansas, brings this his bill against E. M. Hulburd and Daniel E. Parks, of Leadville, in the State of Colorado, and N. P. Seely and Samuel N. Wood, of Denver, in the State of Colorado, and each of them being a citizen of the State of Colorado; and thereupon your orator complains and says—

2 1st. That the property in dispute in this suit exceeds in value, exclusive of costs, the sum of five hundred dollars.

2nd. That on or about the — day of May, 1883, the county of Lake, in the State of Colorado, being indebted to your orator in the sum of fifteen thousand dollars and upwards, your orator commenced an action in this court against the board of county commissioners of said county of Lake for the recovery of said debt and interest thereof, and that such proceedings were thereupon had in said suit that afterwards, to wit, on the 12th day of November, A. D. 1883, your orator recovered a judgment against the said board of county commissioners in this court for the sum of sixteen thousand and fifty-four and $\frac{27}{100}$ dollars, damages and costs, as by the record of said judgment now remaining in the office of the clerk of this honorable court will more fully and at large appear.

And your orator further says that the said judgment was then and there and at all times since the same was entered as aforesaid and still is good and collectable and worth the said sum of sixteen thousand and fifty-four and $\frac{27}{100}$ dollars.

3rd. And your orator further says that on or about the 20th day of May, A. D. 1886, the said E. M. Hulburd, who was then the attorney of your orator and the attorney of record of your orator in said suit, and said Daniel E. Parks, who was then and still is the

county attorney of said Lake county, and one N. P. Seely, a dealer in public securities and largely interested in and a holder of a large amount of Lake county bonds and warrants, and one Samuel N. Wood, fraudulently combined and conspired together for the purpose of cheating and defrauding your orator out of said judgment and the benefits thereof and the debt evidenced and secured thereby, and to procure an assignment of said judgment.

3 4th. And your orator further says that said Hulburd, Parks, Seely, and Wood then and there, as your orator is informed and believes, agreed between themselves that said Hulburd should procure from your orator an assignment of said judgment under the pretence of and for the pretended purpose of thereby being able to collect the same for the use of your orator, and that it was then and there agreed by and between the said Hulburd, Parks, Seely, and Wood that when the said assignment should be procured and made to said Hulburd he should then and there reassign the same to the said Seely or Wood or both of them for some small amount far less than the value of the same, but just what sum your orator is unable to state.

That the said Hulburd, on account of his being the attorney of your orator and by virtue of the confidential relations existing between the said Hulburd and your orator and in pursuance of said fraudulent conspiracy and agreement, called upon one A. A. Higginbotham, the then agent of your orator and who had charge and management of the business of your orator, and, pretending to be acting solely in his capacity as attorney for your orator, stated to said Higginbotham that he, said Hulburd, and said Parks had hit upon a plan by which the said judgment could be collected; that Parks had told him that the county had gotten rid of a large part of its indebtedness, and that this judgment was first in order to be paid, and that the commissioners were willing to pay it, but would not do so unless it was first assigned to said Hulburd; all of which was by the said Hulburd and Parks known to be untrue and said statement made with the sole purpose of procuring such assignment from your orator and in pursuance of said fraudulent conspiracy and agreement as aforesaid.

4 That the said Higginbotham communicated said proposition to your orator and recommended that your orator make the assignment solely for the purpose of collection, and your orator, having the utmost confidence in the integrity of the said Hulburd and believing that by means of such an assignment the said Hulburd, with the assistance of said Parks, would be able to collect said judgment, afterwards and on the 25th day of May, 1886, executed under his hand to said Hulburd his certain instrument in writing by which your orator sold, assigned, and transferred to said Hulburd said judgment and the money due and to become due; said assignment, to which your orator refers for certainty, is on file in said cause in this court; that said assignment on its face purports to have been made for value, but the fact is that the same was made without any consideration and solely for the purpose of enabling

said Hulburd to collect the same; all of which was well known to the said Hulburd, Parks, Seely, and Wood.

5th. And your orator further says that he forwarded the said assignment to his said agent, A. A. Higginbotham, at Denver, to be by him delivered to said Hulburd, and at the same time forwarded to said A. A. Higginbotham a certain instrument in writing and declaration of trust to be executed and delivered by said Hulburd to your orator at and upon the delivery to him, the said Hulburd, of the said assignment, which instrument in writing and declaration of trust was then and there executed and delivered by said Hulburd to said A. A. Higginbotham for the use and benefit of your orator, and is in words and figures as follows, to wit:

Whereas Lucien Baker has this 25th day of May, 1886, executed and acknowledged and delivered to me an assignment of his judgment against Lake county board of county commissioners, Colorado, Gen. No. 1279, which said judgment was rendered and recovered against the said board of county commissioners of county of Lake in the State of Colorado, in the circuit court of the United States for the district of Colorado, on the 12th day of November, 1883, for $16,054.00 *dollars;* and whereas such assignment is so made to me for convenience in the collection of the same; and whereas said Lucien Baker still retains as heretofore the ownership and control of said judgment: Now, therefore, in consideration of the premises, I do hereby acknowledge the receipt of such judgment as aforesaid this 28th day of May, 1886.

(Signed) E. M. HULBURD.

By means of which assignment and said declaration of trust the said Hulburd became and was the holder of said judgment as trustee for and for the sole use and benefit of your orator.

That said instrument in writing and declaration of trust, to which your orator refers for certainty, is in his possession, ready to be produced and proved.

6th. And your orator further says that the said defendants, Hulburd, Parks, Seely, and Wood, well knew that said judgment was collectable and of the value of said sum of sixteen thousand and fifty-four and $\frac{27}{100}$ dollars and accrued interest, and that they fraudulently and corruptly agreed with said Hulburd to pay him a sum of money, but what amount your orator is unable to state, in consideration of his procuring an assignment of said judgment, which judgment he was then to assign to them or to some one of them; and your orator is informed and believes and charges the fact to be that the said defendant, Seely, with the assistance of said Parks, managed the entire transaction and paid whatever money the said Hulburd received for his share in said transaction, and with the assistance of said Parks procured an assignment of all the interest of said Hulburd in said judgment to be made by said Hulburd to said defendant, S. N. Wood; and while the said Wood now claims that he bought said judgment from said Hulburd and actually paid him therefor the sum of twenty-five hundred dollars, your orator is informed and believes and charges the fact to be that no such sum

was paid, and that all the money that was paid to said Hulburd was paid by said N. P. Seely and was paid by him at the city
6 of Leadville, Colorado, on or about the 17th day of June, 1886, and that such assignment was then and there delivered by said Hulburd to said D. E. Parks, with the name of the assignee left blank, and that said D. E. Parks, having first inserted the name of S. N. Wood in the blank space in said assignment, procured the assignment to be filed with the papers in said cause in the office of the clerk of this court on the 21st day of June, 1886; all of which the said D. E. Parks claimed to have done for and on behalf of and as the agent of said defendant, S. N. Wood; but your orator is informed and believes and charges the fact to be that said Parks was the agent of said N. P. Seely, as well as said Wood, and that the assignment was made to said S. N. Wood for the joint benefit of said Seely and said Wood.

7th. And your orator further says that at the time of the assignment by said Hulburd as aforesaid the said Hulburd had no interest whatever in said judgment except as trustee for your orator as aforesaid, and that the said defendants, Parks, Seely, and Wood, had actual notice of the purpose and conditions of said assignment to said Hulburd and the terms and provisions of said declaration of trust hereinbefore set forth.

8th. And your orator further says that, notwithstanding the fraudulent procurement of said assignment and the invalidity thereof, as hereinbefore stated, the said defendant, S. N. Wood, still claims to be the owner of said judgment and is demanding payment thereof from the board of county commissioners of said Lake county, Colorado; and your orator alleges that the board of county commissioners of said Lake county say that the board is about to levy a tax for the payment of this debt, among others, due and owing by said county, and say to your orator that he must show a clear title to the said
7 judgment before it will be paid to him, and thus by reason of said pretended assignment of said judgment your orator is greatly hindered and embarrassed in the collection of said judgment and in fact prevented from collecting the same or any portion thereof.

Your orator further shows that the said S. N. Wood may transfer his pretended interest in said judgment to some stranger, which will still further complicate the title of your orator and his remedy for the collection of said judgment.

All of which actings and doings of the said E. M. Hulburd, D. E. Parks, N. P. Seely, and S. N. Wood, the defendants, are contrary to equity and good conscience and tend to the manifest wrong and irreparable injury and oppression of your orator in the premises.

In consideration of the premises and inasmuch as your orator is entirely remediless in the premises according to the strict rules of the common law and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, may it please your honors to grant unto your orator a writ of subpœna in chancery issued out of and under the seal of this court, to be directed to the said E. M. Hulburd, D. E. Parks, N. P. Seely, and

S. N. Wood, who are each made party defendants to this your orator's bill, commanding them and each of them to personally be and appear before this honorable court, and that the defendants may answer all and singular the premises, but not upon oath or affirmation, answer under oath or affirmation being expressly waived by the complainant.

May it please your honor- to grant unto your orator a writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said N. P. Seely, S. N. Wood, and D. E. Parks, restraining and enjoining them and each of them from in any manner selling, assigning, transferring, or disposing of said judg-
8 ment and from demanding payment of the same of said board of county commissioners of said Lake county until the final hearing of said cause, and upon the final hearing of said cause that said pretended assignment by said Hulburd to said S. N. Wood may be cancelled and held to be fraudulent and void and said assignment from your orator to said Hulburd be cancelled, and for such other and further relief in the premises as may be agreeable to equity and good conscience and the nature of the case requires, and that your orator recover his costs in this behalf expended.

CLINTON REED,
Solicitor for Complainant.

STATE AND DISTRICT OF COLORADO, *ss:*

A. A. Higginbotham, being first duly sworn, on his oath deposes and says that he is the general agent and business manager of the complainant, Lucien Baker, in the State of Colorado; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge except those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; affiant further says that he makes this verification for and on behalf of the said Lucien Baker for the reason that he is familiar with the facts herein stated and the said Lucien Baker is absent from the State of Colorado and unable to make this verification.

A. A. HIGGINBOTHAM.

Subscribed and sworn to before me this 23d day of October, A. D. 1886.

[SEAL.] EDWARD F. BISHOP,
Clerk Dist. Court U. S.

9 (Indorsed:) 2042. U. S. circuit court, dist. of Colorado. Lucien Baker, compl't, *vs.* E. M. Hulburd *et al.* Bill of complaint. Filed Oct. 23, 1886. Edward F. Bishop, clerk. Clinton Reed, solicitor for compl'nt.

And the said subpœna and marshal's return *is* in words and figures as follows, to wit:

Subpœna.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

The President of the United States of America to E. M. Hulburd, Daniel E. Parks, N. P. Seely, and Samuel N. Wood, Greeting:

You and every of you are hereby commanded that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in December next (it being the 6th day of December, A. D. 1886), to answer the bill of complaint of Lucien Baker this day filed in the office of the clerk of said court in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and
10 [SEAL.] the seal of the said circuit court, at the city of Denver aforesaid, this 23d day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the 111th year.

EDWARD F. BISHOP, *Clerk.*
By F. W. TUPPER, *Deputy Clerk.*

Memorandum.

The above-named defendants are hereby notified that unless they and each of them shall enter their appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

EDWARD F. BISHOP, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Marshal's Return.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

DENVER, *November 8th*, 1886.

I have duly executed the within writ by delivering to Daniel Parks, N. P. Seely, and Samuel N. Wood and each of them personally a true copy of the within writ at the place and time as follows, to wit: As to N. P. Seely and Samuel W. Wood, on the 23d day of October, A. D. 1886, at Denver, in Arapahoe county; as to

Daniel Parks, at Leadville, Lake county, November 4th, 1886; as to E. M. Hulburd, could not be found in my district.

This writ therefore returned executed as the law directs this 8th day of November, A. D. 1886.

ZEPH. T. HILL, *Marshal*,
By T. W. BURCHINELL,
Deputy Marshal.

11 *Marshal's Fees.*

Service, 3 persons, at $2.00 each	$6 00
Mileage, 277 miles, at 6c., going only	16 62
Misc. expenses	7 38
Total	$30 00

(Indorsed:) Gen. No., 2042. Circuit court of the United States for the district of Colorado. In chancery. Lucien Baker *vs.* E. M. Hulburd *et al.* Subpœna. Returnable to rule day, first Monday in December, A. D. 1886. Edward F. Bishop, clerk. Filed this 8 day of Nov'r, A. D. 1886. Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk. Clinton Reed, of ——, compl't's sol'r.

And afterwards and on, to wit, the 7th day of November, A. D. 1886, came the said defendants, Seely and Wood, by Edward O. Wolcott, their solicitor, and filed in said court and in said cause their answer to the bill of complaint heretofore filed herein.

And the said answer is in words and figures as follows, to wit:

Answer of Seely and Wood.

UNITED STATES OF AMERICA, *District of Colorado*, } *ss:*

In the Circuit Court within and for said District. In Equity.

LUCIEN BAKER, Complainant,
v.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD, Defendants.

The separate answer of N. P. Seeley and Samuel N. Wood to the bill of complaint of Lucien Baker, the complainant.

The defendants N. P. Seeley and Samuel N. Wood, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken
12 to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

They admit the recovery by the plaintiff against the board of commissioners of Lake county, in the State of Colorado, on or about the 12th day of November, 1883, of a judgment for the sum of fifteen

thousand nine hundred eighty-two and $\frac{70}{100}$ dollars ($15,982.70) and costs, substantially as in the bill of complaint alleged; that as to whether or not the said judgment was then or at any time since has been good and collectible and worth the sum of sixteen thousand and fifty-four and $\frac{27}{100}$ dollars ($16,054.27) or any part thereof these defendants have not and cannot obtain sufficient knowledge or information on which to base a belief.

These defendants deny that on or about the 20th day of May, 1886, or at any other time they or either of them, together with the said defendant, E. M. Hulburd, and the defendant Daniel E. Parks or either of them, or in any way combined or conspired together, fraudulently or otherwise, for any purpose of cheating or defrauding the plaintiff out of said judgment or the benefits thereof or the debt evidenced and described thereby or to procure any assignment of said judgment.

And these defendants deny that they or either of them and the said Hulburd and Parks or either of them agreed between themselves that said Hulburd should procure from the plaintiff an assignment of said judgment under the pretense of or for the pretended purpose of thereby being able to collect the same for the use of the plaintiff or under any other pretense whatsoever, and deny that it was then or at any other time agreed by or between these defendants or either of them and the said Hulburd and Parks or
13 either of them that when said assignment should be procured and made to the said Hulburd he, the said Hulburd, should then or there reassign the same to the said Seeley or Wood or both of them for some small amount less than the value of the same or for any amount whatsoever.

That whether or not the said Hulburd, by virtue of the confidential relations existing between him and the plaintiff or otherwise, called upon A. A. Higgenbotham, as the agent of the plaintiff, having the care or management of the business of the plaintiff, and whether or not the said Hulburd, pretending to be acting solely in his capacity as attorney of the plaintiff or otherwise, stated to said Higgenbotham that he, the said Hulburd, and the said Parks had hit upon a plan by which the said judgment could be collected, or that Parks had told him, the said Hulburd, that the said county had gotten rid of a large part of its indebtedness, or that this said judgment was first in order to be paid, or that the commissioners were willing to pay it, but would not do so unless it was first assigned to said Hulburd, these defendants have not and cannot obtain sufficient knowledge or information on which to base a belief, but these defendants deny that the said Hulburd so called upon the said Higginbotham or so made any such alleged representations by reason of any fraudulent conspiracy or agreement between the said Hulburd and these defendants or either of them.

That whether or not said alleged statements were by the said Hulburd or Parks known to be untrue, and whether or not the same were made by said Hulburd for the sole purpose of procuring such assignment from the plaintiff, these defendants have not and cannot obtain sufficient knowledge or information on which to base a belief,

but these said defendants deny that such statements were
14 made in pursuance of any fraudulent conspiracy or agreement on their part.

That whether or not the said Higgenbotham communicated said proposition to plaintiff or recommended that the plaintiff make the said assignment solely for the purpose of collection or otherwise, and whether or not the plaintiff, having confidence in the integrity of the said Hulburd or believing that by means of such assignment the said Hulburd, with the assistance of said Parks, would be able to collect said judgment, afterwards executed to said Hulburd his certain instrument in writing, by which said plaintiff sold, assigned, and transferred to said Hulburd said judgment and the money due or to become due thereon, these defendants have not and cannot obtain sufficient knowledge or information on which to base a belief except as hereinafter specifically stated.

These defendants admit that the said plaintiff did make and execute to the said Hulburd, on or about the 25th day of May, 1886, an assignment of the said judgment, and that the said assignment on its face purports to be made for value; but whether or not the said assignment was made without any consideration and solely for the purpose of enabling the said Hulburd to collect the same these defendants have not and cannot obtain sufficient knowledge or information on which to base a belief, and they deny that such fact was at the time of such assignment or at any time known to them, these said defendants, Seeley and Wood.

That whether or not the plaintiff forwarded the said assignment to his agent, A. A. Higgenbotham, at Denver, to be by him delivered to said Hulburd, and whether at the same time the said plaintiff forwarded to the said Higgenbotham a certain instrument in writing and declaration of trust, to be executed and delivered by said Hulburd to the said plaintiff upon delivering to him, said Hul-
burd, the said assignment, and whether such instrument in
15 writing and declaration of trust was then or there or at any time executed or delivered by said Hulburd to said Higgenbotham for the use and benefit of the plaintiff in the manner and form in the bill of complaint set forth or otherwise, these defendants have not and cannot obtain sufficient knowledge or information on which to base a belief.

That whether or not by means of said assignment and declaration of trust the said Hulburd became and was the holder of said judgment as trustee of and for the sole use and benefit of the plaintiff these defendants have not and cannot obtain sufficient knowledge or information on which to base a belief.

And these defendants deny that they, the said Seeley and Wood, well knew or had any knowledge that said judgment was collectible or of the value of said sum of sixteen thousand and fifty-four and $\frac{27}{100}$ dollars ($16,054.27) and accrued interest or any other specific sum or value whatever, and deny that they fraudulently and corruptly agreed with said Hulburd to pay him a sum of money in consideration of his procuring an assignment of said judgment to him, the said Hulburd, who was then to assign to them or some one

of them; and these defendants deny that the defendant Seeley, with the assistance of said Parks or otherwise, managed the entire transaction except as hereinafter specifically stated. The defendants admit that the said N. P. Seeley did procure an assignment of the interest of said Hulburd in said judgment to be made by said Hulburd to the defendant Samuel N. Wood, and that said Wood does *not* now claim that he bought said judgment from said Hulburd and actually paid him therefor the sum of twenty-five hundred dollars ($2,500), and admit that after the procuring of said assignment these defendants caused the same to be filed, with the papers in said action, in the office of the clerk of this court on the 21st day
16 of June, 1886; but these defendants deny that the same was done or managed by said Daniel E. Parks, or that said Daniel E. Parks claimed to have done it for or on behalf of or as the agent of said defendant, Samuel N. Wood, and deny that said Parks was the — of said Wood or said Seeley, but admit that said assignment to said Samuel N. Wood was for the joint benefit of said Seeley and Wood.

And the defendants upon information and belief deny that at the time of the assignment by said Hulburd as aforesaid the said Hulburd had no interest whatever in said judgment except as trustee for the plaintiff, as in the bill alleged, and deny that these defendants, Seeley and Wood, had actual notice or any notice of the purposes and conditions of said assignment to said Hulburd or the terms and provisions of said declaration of trust in the bill set forth.

And these defendants admit that said Samuel N. Wood still claims to be the owner of said judgment, and admit that said claim is in the interest of himself and the said Seeley, and that he is demanding payment thereof from the board of county commissioners of said Lake county, Colorado; that whether or not the board of commissioners of said Lake county say that the board is about to levy a tax for the payment of this debt, among others, due and owing by said county, and whether or not the said board say to the plaintiff that he must show a clear title to the said judgment before it will be paid to him, these defendants have not and cannot obtain sufficient knowledge or information on which to base a belief.

And these defendants, further answering, show that heretofore, to wit, on or about the 15th day of June, 1886, the defendant E. M. Hulburd came to see said defendants and proposed to sell to
17 them the certain judgment in the bill of complaint described; that these defendants carefully inquired of said Hulburd as to his authority to sell the same and demanded that he exhibit the said authority in writing; that thereupon the said Hulburd produced and exhibited to these defendants an assignment of said judgment in the words and figures following, to wit:

"LEAVENWORTH, KANSAS, *May 25th*, 1886.

For value received I hereby sell, assign, transfer, and set over to E. M. Hulburd all my right, title, interest, claim, and demand of, in, and to the within-described judgment and the money due and

to become due thereon, and authorize him to sue for and collect the same at his own proper cost and expense.

(Signed) LUCIEN BAKER."

That said assignment was duly endorsed upon a transcript of said judgment so rendered in this court as aforesaid, and was duly acknowledged before a notary public in Leavenworth, Kansas, on the 25th day of May, 1886; that at the time of such negotiation of the defendant Hulburd with these defendants the said assignment had been filed with the papers in this cause in this court as of June 11th, 1886, and such assignment was noted upon the judgment docket of this court.

And these defendants further allege that at the time of the negotiations of said Hulburd with these defendants as aforesaid the value of said judgment was purely speculative, and that it was impossible to tell whether the same or any part thereof would be paid or would be collectible; that it was then a notorious fact, both to these defendants and to the said Hulburd well known, that the indebtedness of Lake county exceeded the limit permitted by the constitution of Colorado in such cases by more than four hundred thousand dollars ($400,000).

And these defendants further allege that about the time of and prior to the negotiation of the said Hulburd with these defendants for the sale to them of said judgment the said Hulburd
18 was offering the same for sale at various banks and various brokers in the city of Denver; that as a result of the various negotiations of the said Hulburd these defendants offered to buy said judgment from said Hulburd for the sum of twenty-five hundred dollars ($2,500), which through the uncertainty of the collection of said judgment and the speculative character of its value was all that said judgment at that time was reasonably worth; that said offer was accepted, and thereupon, at the city of Leadville, in the State of Colorado, on or about the 19th day of June, 1886, the said Hulburd assigned said judgment in the words and figures following, to wit:

"For value received I do hereby sell, assign, transfer, and set over unto S. N. Wood, of Denver, Colorado, all of the right, title, interest, claim, and demand which the plaintiff, Lucien Baker, or I have of, in, and to the said judgment above described, a transcript of which is hereto annexed, and authorize and empower him, the said assignee, to collect the same at his own proper cost and expense.

(Signed) E. M. HULBURD."

Which said assignment was attached to a description of said judgment and was duly acknowledged before a notary public in the county of Lake and State of Colorado at the day above mentioned; that thereupon the defendant N. P. Seeley, for and on behalf of himself and the defendant S. N. Wood, paid to the said Hulburd the full sum of twenty-five hundred dollars ($2,500), and thereupon the said Hulburd executed and delivered to the said Seeley a receipt in the words and figures following, to wit:

"LEADVILLE, COLO., *June 19th*, 1886.

Received of N. P. Seeley, for S. N. Wood, twenty-five hundred dollars in full payment of sum paid for judgment of Lucian Baker against county of Lake, which judgment I hold and own under an assignment from said Baker to me.

(Signed) E. M. HULBURD."

And these defendants allege that at the time of the purchase by them of said judgment as aforesaid they had no knowl-
19 edge whatever of the existence of any declaration of trust or other instrument showing any interest in said judgment in the said Lucian Baker after his assignment thereof to the said Hulburd; that these defendants bought said judgment and paid therefor the sum of twenty-five hundred dollars ($2,500) in good faith, fully believing that said Hulburd was the sole owner in his own right of the same, with full right, power, and authority to sell and assign the same; that in purchasing said judgment these defendants relied upon the assignment of said judgment so made by said Lucien Baker to the said E. M. Hulburd, which assignment was then of record and which had been duly noted upon the judgment docket of this court.

And these defendants further allege that after obtaining the assignment of said judgment from said Hulburd they forthwith and on the 21st day of June, 1886, caused the said assignment from said Hulburd to said Wood to be filed with the papers in this cause and the same to be noted upon the judgment docket of this court; that ever since said date—June 19th, 1886—the defendants have been and now are the holders in good faith, in the name of said Samuel N. Wood, of said judgment against Lake county in the bill described.

And the defendants deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged; without this, that any other matter, cause, or thing in said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and they pray
20 to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD O. WOLCOTT,
Solicitor for Defendants N. P. Seeley & S. N. Wood.

UNITED STATES OF AMERICA, *District of Colorado*, } *ss:*

N. P. Seeley and Samuel N. Wood, being each severally and duly sworn, depose and say that they are defendants in the above-entitled action; that they have read the foregoing answer and know the contents thereof; that the facts therein stated are true to their own knowledge and to the knowledge of each of them except matters

therein stated on information and belief, and that as to such matters they and each of them believe the same to be true.

N. P. SEELEY.
SAMUEL N. WOOD.

Subscribed and sworn to before me this 17th day of Nov., A. D. 1886.

[SEAL.] EDWARD F. BISHOP,
Clerk Dist. Court U. S.,
By F. W. TUPPER,
Deputy Clerk.

(Indorsed:) No. 2042. In U. S. circuit court. Lucien Baker, complainant, *v.* E. M. Hulburd *et al.*, defendants. Answer of N. P. Seeley and Samuel N. Wood. Filed Nov. 17, 1886. Edward F. Bishop, clerk. Edw'd O. Wolcott, att'y for ——— ———.

21 And afterwards and on, to wit, the 29th day of November A. D. 1886, came again the same complainant, by his solicitor aforesaid, and filed in said court and in said cause his replication to the answer heretofore filed herein.

And the said replication is in words and figures as follows, to wit:

Replication to Answer of Seeley & Wood.

UNITED STATES OF AMERICA, *District of Colorado*, } *ss:*

In the Circuit Court within and for said District.

LUCIEN BAKER, Complainant,
vs.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD, Defendants.

The replication of Lucien Baker, the above-named complainant, to the answer of N. P. Seeley and Samuel N. Wood, defendants.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefits and advantages of exception which may be had and taken to the manifold insufficiencies of the said answer, for replication thereto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by repliant; without this, that any other matter or
22 thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver, maintain, and prove as this honorable

court shall direct, and humbly prays as in and by his said bill he hath already prayed.

CLINTON REED,
Solicitor for Complainant.

(Indorsed:) 2042. U. S. circuit court. Lucien Baker *vs.* E. M. Hulburd *et al.* Replication to answers of Seeley & Wood. Filed Nov. 29, 1886. Edward F. Bishop, clerk.

And afterwards and on, to wit, the 4th day of December, A. D. 1886, came the said defendant, Daniel E. Parks, by Edward O. Wolcott, his solicitor, and filed in said court and in said cause his answer to the bill of complaint heretofore filed herein.

And the said answer is in words and figures as follows, to wit:

Answer of Parks.

UNITED STATES OF AMERICA, *District of Colorado*, } *ss:*

In the Circuit Court within and for said District. In Equity.

LUCIEN BAKER, Complainant, *v.* E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD, Defendants.	Separate Answer of Defendant Daniel E. Parks.

The separate answer of Daniel E. Parks to the bill of complaint of Lucien Baker, the complainant.

23 The defendant Daniel E. Parks, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto or to so much and such parts thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says:

This defendant denies that on or about the 20th day of February, A. D. 1886, or at any other time before or since he, together with said defendants, E. M. Hulburd, N. P. Seeley, and Samel N. Wood, or either of them, combined or conspired together, fraudulently or otherwise, for the purpose of cheating or defrauding the plaintiff out of said judgment or the benefits thereof or the debt evidenced thereby or to procure any assignment of said judgment or for any other purpose.

And this defendant denies that he and the said Hulburd, Seeley, and Wood agreed between themselves that said Hulburd should procure from the plaintiff an assignment of said judgment under the pretence of or for the pretended purpose of thereby being able to collect the same for the use of the plantiff or under any other pretence whatsoever.

And defendant denies that it was then or at any other time agreed by or between this defendant, the said Hulburd, Seeley, or Wood or either of them that when said assignment should be procured and made to the said Hulburd he, the said Hulburd, should then or there reassign the same to the said Seeley or Wood or both of them for some small amount less than the value of the same or for any amount whatever.

That whether or not the said defendant, Hulburd, by virtue of the confidential relations existing between him and the said plaintiff or otherwise, called upon A. A. Higgenbotham, the alleged
24 agent of the plaintiff, having the care or management of the business of the plaintiff, or whether or not the said Hulburd, pretending to be acting solely in his capacity as attorney of the plaintiff or otherwise, stated to said Higginbotham that he, the said Hulburd, and this defendant had hit upon a plan by which said judgment could be collected, or that this defendant had told him, the said Hulburd, that the county had gotten rid of a large part of its indebtedness, or that this said judgment was first in order to be paid, or that the commissioners of said county of Lake were willing to pay it, but would not do so unless it was first assigned to said Hulburd, this defendant has not and cannot obtain sufficient knowledge or information upon which to base a belief; but this defendant denies that said Hulburd so called upon said Higgenbotham or so made any such alleged representations by reason of any fraudulent conspiracy, arrangement, or agreement between the said Hulburd and this defendant, and this defendant avers that if any such statement was made by said Hulburd to said Higgenbotham this defendant denies the same so far as relates to him.

That whether or not said alleged statements were by said Hulburd known to be untrue and whether or not the same were made by said Hulburd for the sole purpose of procuring such assignment from the plaintiff this defendant has not and cannot obtain sufficient knowledge or information upon which to base a belief; but this defendant denies that such statements were made in pursuance of any fraudulent conspiracy or agreement on his part; and whether or not the said Higgenbotham communicated said proposition to the plaintiff or recommended that the plaintiff make said assignment solely for the purpose of collection or otherwise, and whether or not the plaintiff, having confidence in the integrity of said Hulburd or believing that by means of such assignment the said Hulburd would be able to collect said judgment, afterwards executed
25 to said Hulburd his certain instrument in writing by which said plaintiff sold, assigned, and transferred to said Hulburd said judgment and the money due or to become due thereon, this defendant has not and cannot obtain sufficient knowledge or information upon which to base a belief, and defendant denies any and all knowledge of the facts alleged in said statement.

This defendant admits that said plaintiff did make and execute to said Hulburd on or about the 25th day of May, A. D. 1886, an assignment of said judgment, and that said assignment on its face purports to be made for value; but whether or not said assignment

was made without any consideration and solely for the purpose of enabling said Hulburd to collect the same this defendant has not and cannot obtain sufficient knowledge or information upon which to base a belief, and he denies that such fact was at the time of such assignment or at any other time known to him, the said defendant, Parks.

That whether or not the plaintiff forwarded the said alleged assignment to his said alleged agent, A. A. Higgenbotham, at Denver, to be by him delivered to said Hulburd, and whether at that time the said plaintiff forwarded to the said Higgenbotham an instrument in writing or declaration of trust to be executed and delivered by said Hulburd to the said plaintiff upon the delivery to him, the said Hulburd, of the said assignment, and whether such instrument in writing or declaration of trust was then or there or at any time executed and delivered by said Hulburd to said Higgenbotham for the use and benefit of the plaintiff in manner or form in the bill of complaint herein alleged and set forth or otherwise, this defendant has not and cannot obtain sufficient knowledge or information upon which to base a belief.

That whether or not by means of such alleged assignment
26 or declaration of trust the said Hulburd became or was the holder of said judgment as trustee of and for the sole use or benefit of the plaintiff this defendant has not and cannot obtain sufficient knowledge or information upon which to base a belief.

And this defendant denies that he well knew or had any knowledge that said judgment was collectible or of the value of said sum of sixteen thousand and fifty-four and $\frac{27}{100}$ dollars ($16,054.27) and accrued interest or any other sum or value whatever, and denies that he fraudulently or corruptly agreed with said Hulburd to pay him a sum of money in consideration of his procuring the assignment of said judgment, who was then to assign the same to him, the said Parks, or to said Seeley or Wood or any or either of them.

And this defendant denies that he, with the assistance of said defendant Seeley or otherwise, managed the supposed alleged entire transaction set forth in the plaintiff's bill in this suit, or that he paid divers sums or any money which the said Hulburd received, as alleged in the alleged transaction, and denies that he assisted said Seeley to procure an assignment of all or any interest of said Hulburd in said judgment to be made by said Hulburd to said defendant, Samuel N. Wood, and denies that the alleged assignment was delivered by said Hulburd to this defendant with the name of the assignee left blank, and that this defendant inserted the name of Samuel N. Wood in the blank space in said assignment; and this defendant denies that he ever claimed at any time to have acted in said alleged matter on behalf of or as the agent of said defendant, Wood, and denies that he was the agent of said Seeley or said Wood in such alleged transaction.

And this defendant, further answering, alleges that as to whether
or not at the time of the said alleged assignment by said
27 Hulburd as aforesaid the said Hulburd had no interest whatever in said judgment, except as trustee for the plaintiff as

aforesaid, this defendant has not and cannot obtain sufficient knowledge *of* information upon which to base a belief; and he denies that he had actual notice of the purposes or conditions of said assignment to said Hulburd or the terms, provisions, or statements of said alleged supposed declaration of trust set forth in plaintiff's complaint herein.

And the defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged; without this, that any other matter, cause, or thing in said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct; and he prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD O. WOLCOTT,
Solicitor for Defendant Parks.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

Daniel E. Parks, being first duly sworn, deposes and says that he is the defendant named in the foregoing answer; that he has read the said answer and knows the contents thereof, and that the
28 same is true of his own knowledge except as to those matters which are therein stated upon information and belief, and as to those matters he believes it to be true.

DAN'L E. PARKS.

Subscribed and sworn to before me this 3rd day of December, A. D. 1886.

[SEAL.] EDWARD F. BISHOP,
Clerk Dist. Court U. S.,
By F. W. TUPPER,
Deputy Clerk.

(Indorsed:) No. 2042. In U. S. circuit court. Lucien Baker, complainant, *v.* E. M. Hulburd *et al.*, defendants. Separate answer of Daniel E. Parks. Filed Dec. 4, 1886. Edward F. Bishop, clerk.

And afterwards and on, to wit, the 4th day of January, A. D. 1887, came again the said complainant, by his solicitor aforesaid, and filed in said court and in said cause his replication to the answer of Daniel E. Parks heretofore filed herein.

And the said replication is in words and figures as follows, to wit:

Replication to Answer of Parks.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court within and for said District.

LUCIEN BAKER, Complainant,
vs.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD, Defendants. } In Equity.

29 The replication of Lucien Baker, the above-named complainant, to the answer of Daniel E. Parks, defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefits and advantages of exception which may be had and taken to the manifold insufficiencies of the said answer, for replication thereto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

CLINTON REED,
Attorney for Complainant.

(Indorsed:) 2042. U. S. circuit court. Lucien Baker *vs.* E. M. Hulburd *et al.* Replication to answer of D. E. Parks. Filed Jan. 4, 1887. Edward F. Bishop, clerk.

And afterwards and on, to wit, the 27th day of September, A. D. 1887, there was opened, published, and filed in said court and in said cause the deposition of Lucien Baker on behalf of complainant.

And the said deposition is in words and figures as follows, to wit:

30 *Deposition — Lucien Baker — Behalf — Complainant.*

In the Circuit Court of the United States for the District of Colorado.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States of America to William C. Hook, Esq., a notary public residing at cor. 3d & Delaware Sts., Leavenworth, in the county of —— and State of Kansas, Greeting:

Whereas it has been represented that Lucien Baker is a material

witness in a certain cause now pending in the circuit court of the United States for the district of Colorado, wherein Lucien Baker is plaintiff and E. M. Hulburd, Daniel E. Parks, N. P. Seeley, and Samuel N. Wood are defendants, and that the said witness resides at Leavenworth aforesaid, without the said district of Colorado, and that his personal attendance cannot be procured at the trial of the said cause:

Now, know ye that, in confidence of your prudence and fidelity, you have been appointed and by these presents you are invested with full power and authority as commissioner to examine the said witness, and you are, therefore, authorized and required to cause the said witness to come before you at such times and place as you may therefor designate and appoint, and diligently to examine the said witness on the oath or affirmation of the said witness by you first duly in that behalf administered, and faithfully to take the deposition of the said witness upon all interrogatories and cross-interrogatories attached to these presents on the part of the said complainant and none other, and the same when thus taken, together with
31 this commission and the said interrogatories, to certify into the said circuit court of the United States, in a sealed envelope, with the least possible delay.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the
[SEAL.] said circuit court, at the city of Denver, in said district, this 30th day of March, A. D. 1887, and of the Independence of the United States the 111th year.

EDWARD F. BISHOP, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

The deposition of Lucien Baker, of the county of Leavenworth and State of Kansas, a witness of lawful age, produced, sworn, and examined upon his corporal oath, on the 2nd day of April, A. D. 1887, at the office of William C. Hook, corner 3rd & Delaware street-, city of Leavenworth, in the county of Leavenworth and State aforesaid, by me, William C. Hook, a commissioner duly appointed by a *dedimus potestatem* issued out of the clerk's office of the circuit court of the United States for the district of Colorado, bearing teste in the name of the Chief Justice of the United States, and the seal of said court affixed thereto, and to me directed as such commissioner, for the examination of the said Lucien Baker, witness in a certain suit and matter in controversy now pending and undetermined in the said circuit court, wherein Lucien Baker is plaintiff and E. M. Hulburd, Daniel E. Parks, N. P. Seeley, and Samuel N. Wood are defendants, in behalf of the said plaintiff, as well *as* on the cross-interrogatories of the defendants as upon the interrogatories of the plaintiff, which were attached to the said commission, and upon none others.

The said LUCIEN BAKER, being first duly sworn by me as a
32 witness in the said cause, previous to the commencement of his examination, to testify the truth, as well on the part of the

plaintiff as the defendants, in relation to the matters in controversy between the said plaintiff and defendants, testified and deposed as follows:

Int. 1. What *if* your name, residence, and occupation?

Ans. Lucien Baker; residence, Leavenworth, Kansas; attorney-at-law.

Int. 2. How long have you resided in the State of Kansas?

Ans. For eighteen years.

Int. 3. State whether or not you are the complainant in this action.

Ans. I am.

Int. 4. Do you know the defendants or any or either of them? If yea, state which of them.

Ans. E. M. Hulburd, and was introduced to Samuel N. Wood August 5th, 1886. I do not know the other defendants.

Int. 5. Did you on November 12th, 1883, recover a judgment against the board of county commissioners of Lake county, Colorado? If yea, state in what court the same was recovered and the amount of the judgment.

Ans. On the 12th day of November, 1883, I recovered judgment against the board of county commissioners of Lake county, State of Colorado, for the amount mentioned in the bill of complaint. The amount was a little upwards of $15,900.00. The judgment was recovered in the circuit court of the United States for the District of Colorado.

Int. 6. Did you have any agent or representative in Colorado who attended to the matters involved in that suit for you? And, if so, state who he was, state what authority he had in the matter and what his instructions were concerning an assignment of said
33 judgment.

Ans. A. A. Higinbotham was my agent in that matter. He had authority to employ counsel for the purpose of procuring judgment and collection after judgment. After judgment had been obtained he wrote me that the board of county commissioners refused to make a levy of taxes for the judgment, but that if the judgment stood in Hulburd's name they would probably make the levy. This letter has been destroyed.

Int. 7. Did you make an assignment of said judgment? And, if so, state to whom and for what purpose you made such assignment.

Ans. Mr. Higinbotham sent me an assignment of said judgment for my signature, and I signed the same. Judgment was assigned to defendant Hulburd for the sole purpose of enabling him to collect the same for me, which we thought would be more easily done in that way than if the judgment stood in my name.

Int. 8. If in answer to the last interrogatory you say that you assigned said judgment to E. M. Hulburd, state whether or not the said Hulburd paid you anything for said judgment and whether he had any authority to sell the same.

Ans. Hulburd paid nothing whatever for said judgment and had

no authority to sell the same or to do anything else than to collect the same for me.

Int. 9. State whether or not at the time you made this assignment any other paper or agreement was executed; and, if so, by whom. If yea, attach the same to your deposition if you have it, or account for it.

Ans. At the time I executed the assignment to Hulburd (which was in May, 1886), as part of the said transaction, I drew up an instrument from Hulburd to me to the effect that he took such assignment of said judgment for the purpose of collection only.
34 This instrument was executed by Hulburd. The assignment and this instrument were one transaction. I have not the instrument which Hulburd executed in return in my possession; it is in the possession of Mr. Higinbotham, in Denver, and therefore I cannot attach the same to this deposition.

Int. 10. Do you know what has become of the assignment and the other agreement executed at the same time? If so, state what has become of them.

Ans. I do not know where the assignment is, but presume it is of record and filed with the papers in my suit against the board of county commissioners of Lake county. As I have stated, the other paper signed by Hulburd to me is in the possession of Mr. Higinbotham.

Int. 11. State whether or not you have in your possession any statement or statements of the defendant E. M. Hulburd of the nature of the transaction between himself and the other defendants or either of them regarding said judgment. If so, attach the same to your deposition.

Ans. I have no statements concerning this matter from defendant Hulburd. Whatever there are, are in the possession of my agent, Mr. Higinbotham.

Int. 12. State whether or not you ever had a conversation with the defendant S. N. Wood regarding this judgment and the assignment thereof. If so, state when and where and what was said during said conversation. State fully.

Ans. On the 5th day of August, 1886, in company with A. A. Higinbotham, I called on the defendant S. N. Wood in Denver, at the bank of which he was then cashier. I was introduced to him by Mr. Higinbotham. I said to Mr. Wood, I have called to see you about my judgment against Lake county. When I told him
35 of my business he appear- to be uneasy, annoyed, and nervous. I told him that Mr. Hulburd did not own the judgment; that he had no right to assign it to him; that he, Hulburd, had it for collection only and for no other purpose, and thereupon I commenced reading to him the paper executed by Hulburd to me, relating to such judgment, and before I had proceeded very far he interrupted me and said, There is no use of your reading that to me. I took advice of counsel before I purchased this judgment. I knew what I was doing, and I am going to hold it. You cannot get it without a lawsuit; and thereupon he got up hastily and started off and I requested him to remain, as I wished to talk with him about

the matter further. He refused, and as he was stepping away I said, Mr. Wood, I demand a reassignment of the judgment to me. He said, You cannot have it. I paid $2,500.00 for the assignment of this judgment to me, and, if you want a lawsuit, jump in. I have taken advice of counsel about it. I never saw Mr. Wood before this interview, and have never spoken to him since or in any manner communicated with him before this interview.

Int. 13. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination — of the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I recollect of nothing further at this time.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court within and for said District.

36 LUCIEN BAKER, Plaint., }
vs.
E. M. HULBURD *et al.*, Def's. }

Cross-interrogatories propounded to the plaintiff, LUCIEN BAKER, as a witness in his own behalf:

Cross-int. 1. If you say in answer to interrogatory 6 that you had an agent in Colorado, and that he had instructions concerning an assignment of the judgment in controversy, state whether such instructions were in writing or verbal. If in writing, attach a copy thereof to your answer herein. If they were verbal, state when and where, in whose presence, and under what circumstances they were given.

Ans. A. A. Higinbotham was my agent before and since such judgment was obtained. I talked with him in Leadville when he was purchasing the indebtedness upon which judgment was rendered and obtained. I saw him in Leavenworth, Kansas, about one year, I think, before this suit was brought. I intrusted the whole business to him. He is my father-in-law. He wrote me several times about the judgment and efforts to collect it and one letter with reference to the assignment of the judgment. I have kept none of the letters, as I had confidence in him and had no thought that they would ever be needed for any purpose. I do not think any one was present when Mr. Higinbotham and I talked about this matter, nor can I now be more definite as to time or place, except as to what occurred in Denver in August, 1886, referred to in my direct examination.

Cross-int. 2. If you say in answer to interrogatory 7 that you made an assignment of said judgment, set forth in your answer hereto a copy of said assignment.

Ans. I did make an assignment of said judgment to Mr. E. M.

Hulburd. The assignment was prepared by him and in his
37 handwriting, as I verily believe. I have not such assignment in my possession. I believe it is filed with the papers in my suit against the board of county commissioners of Lake county. At the time I signed such paper I drew up a paper for Mr. Hulburd to sign, showing for what purpose he held the judgment, and forwarded both papers to my agent, Higinbotham, and when the assignment was delivered to Mr. Hulburd he executed the paper back, which is in Mr. Higinbotham's possession.

Cross-int. 3. If you say you made such an assignment to E. M. Hulburd, state what limitation or restriction was set forth in your assignment of said judgment upon his power to sell or otherwise dispose of said judgment.

Ans. The assignment will show for itself. In that paper there were no restrictions or limitations. Such restrictions and limitations were in the paper executed by Hulburd to me.

Cross-int. 4. If in answer to interrogatory 9 you say some other paper or agreement was executed at the time of making the assignment of the judgment, state where, in whose presence, and under what circumstances such other agreement was executed and what was done with it at the time.

Ans. This interrogatory is substantially answered by the answer to the second cross-interrogatory. My agent will produce that paper. When it left my hand it was not signed; it was forwarded to Mr. Higinbotham with instructions to have it signed by Mr. Hulburd. Whether any one witnessed his signature I do not know; the paper will show.

Cross-int. 5. If in answer to interrogatory 11 you say that you have in your possession any statement or statements of the defendant Hulburd there inquired about, state in whose handwriting such statements were made, who dictated or otherwise prepared the same, and where and under what circumstances the same were made.

38 Ans. I have no statement directly from E. M. Hulburd. Whatever there is about such matters were between my agent and Mr. Hulburd.

Cross-int. 6. Where is the defendant E. M. Hulburd at this time, and when and where did you last see him?

Ans. I have not seen Mr. Hulburd since August, 1881, in Leadville, Colorado. I do not know where he now is. It may be that some of the defendants know more about the whereabouts of Mr. Hulburd than I do, as they had the last transaction with him. I do not know where he is at this time.

Cross-int. 7. If in answer to interrogatory 12 you say that you had a conversation with S. N. Wood regarding this judgment and its assignment, state in whose presence such conversation took place and how many different conversations have you had upon the subject of said judgment with said S. N. Wood, giving dates of the same.

Ans. I have answered this question in my direct examination. I never saw S. N. Wood but once, and had but one conversation with

him, and that was in Denver, August 5th, 1886, and my conversation with him was very short, and at the bank, where he was stopping, and in the presence of A. A. Higinbotham and of my son, Bur Baker, a boy of twelve years of age.

Cross-int. 8. If your know of any other matter of benefit or advantage to the defendants in this case or either of them or material to the subject of this cross-examination or of the matters in question in this case, set forth the same fully and at large.

Ans. Of my own knowledge and present recollection I know nothing more than what I have stated.

LUCIEN BAKER.

STATE OF KANSAS, } ss:
Leavenworth County, }

39 I, William C. Hook, of the county of Leavenworth and State of Kansas, a commissioner duly appointed to take the deposition of the said Lucien Baker, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Lucien Baker as a witness in the said suit between the said Lucien Baker, as plaintiff, and E. M. Hulburd, Daniel E. Parks, N. P. Seeley, and Samuel N. Wood, as defendants, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said parties; that the said deposition was taken by me and reduced to writing by me, at my office, in the city of Leavenworth, in the county of Leavenworth and State of Kansas, on the 2nd day of April, A. D. 1887, and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto as written down were read over to said witness, and that thereupon the same was signed and sworn to by the said deponent, Lucien Baker, before me at the place and on the day and year last aforesaid.

WILLIAM C. HOOK,
Commissioner.

Witness my hand and notarial seal the day and year aforesaid. My commission as notary expires Aug. 28, 1890.

Fees, 5.85, unpaid.

WILLIAM C. HOOK,
[SEAL.] *Commissioner and Notary Public.*

STATE OF KANSAS, } ss:
First Judicial District, Leavenworth County, }

I, C. W. Curtan, clerk of the district court of the first judicial district of the State of Kansas, sitting within and for said county
40 of Leavenworth, the same being a court of record, do hereby certify that William C. Hook, whose name is signed to the annexed deposition as notary public, was at the time of signing the same an acting notary public, duly commissioned and qualified as such, for said county of Leavenworth and authorized by the laws of Kansas to take the same, and that I am well acquainted with his

handwriting and believe his signature thereto is genuine, and that the same is in conformity with the laws of Kansas.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at my office, in Leavenworth city, this 13th day of April, A. D. 1887.

C. W. CURTAN,
Clerk of the District Court of Leavenworth County, Kansas.

NOTE BY CLERK.—Interrogatories and cross-interrogatories attached to original not copied here.

(Indorsed:) 2042. Circuit court U. S. Lucien Baker *vs.* E. M. Hulburd *et al.* Deposition of Lucien Baker — behalf complainant. Opened, published, and filed Sep. 27, 1887. William A. Willard, clerk.

And afterwards and on, to wit, the 6th day of October, A. D. 1887, came John W. Webster, Esq., an examiner in chancery of said court, and filed in said court and in said cause his report of the testimony taken before him on behalf of the complainant.

And the said report is in words and figures as follows, to wit:

Examiner's Report of Testimony — Behalf Complainant.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

41 In the Circuit Court of the United States within and for the District of Colorado.

LUCIEN BAKER, Complainant,
vs.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD, Defendants. } In Chancery.

Testimony of witnesses taken before John W. Webster, one of the examiners in chancery of the circuit court of the United States for the district of Colorado, pursuant to the sixty-seventh rule of the Supreme Court of the United States and amendments thereto in chancery matters, and also pursuant to the stipulation of counsel hereto attached in the above-entitled cause, now pending and undetermined in the circuit court of the United States, wherein Lucien Baker is complainant and E. M. Hulburd, Daniel E. Parks, N. P. Seeley, and Samuel N. Wood are defendants, on the part of the plaintiff, on this 28th day of September, A. D. 1887, at the hour of 2 o'clock p. m., at my office, in the city of Denver, county of Arapahoe and State of Colorado.

Present: Clinton M. Reed, attorney for plaintiff; J. F. Vaile, attorney for defendants.

Thereupon the plaintiff produced A. A. HIGGINBOTHAM, a witness of lawful age, who, being by me first duly cautioned and sworn to

testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. Where do you reside?
A. In Denver; 1519 Pearl street.
Q. Did you ever reside in Leadville?
A. Yes, sir.
Q. When?
42 A. I resided in Leadville from 1879 to 1883, and then a short time in 1884; about two months in 1884.
Q. You have resided here since then?
A. Yes, sir.
Q. Do you know Lucien Baker, the plaintiff?
A. Yes, sir.
Q. How long have you known him?
A. I have known him for seventeen or eighteen years.
Q. What relation is he to you?
A. Son-in-law.
Q. What business relations have you had with him since the time you resided in Leadville at that time?
A. I was his agent in the purchase of some county warrants and other investments.
Q. In Leadville?
A. Yes, sir.
Q. How long ago?
A. It was in 1881, I think, they commenced, and then I have been his agent ever since in the management of business.
Q. His business in Colorado or elsewhere?
A. In Colorado; not elsewhere.
Q. Do you know the defendants, N. P. Seeley, Samuel N. Wood, Daniel Parks, and E. M. Hulburd?
A. Yes, sir.
Q. What relation did Hulburd bear to the plaintiff in connection with this case and other business of the plaintiff, if any?
A. Hulburd was the plaintiff's attorney in Leadville in the way of getting a judgment which was obtained here in the circuit court.
Q. And the judgment concerning which this suit was brought?
A. Yes.
Q. Was he attorney of record in that case?
A. Yes, sir.
Q. Where does Mr. Baker reside?
A. In Leavenworth, Kansas.
Q. Where did E. M. Hulburd reside when this judgment was obtained?
A. At Leadville.
Q. D. E. Parks?
A. At Leadville.
Q. N. P. Seeley and Samuel N. Wood?

43 A. N. P. Seeley, I think, at that time in Leadville, and S. N. Wood resided in Denver.

Q. You may state, beginning at the first, how this judgment came to be assigned to Hulburd by Baker, and what you had to do with it.

A. Well, I, being the agent of Mr. Baker, of course conferred with Mr. Hulburd about all such business. About some time from the 15th to the 20th of May, 1886, within that time, Hulburd called at my house, and after talking a little with me, in which he appeared a good deal elated——

Defendants' counsel objects to any conversation had with Mr. Hulburd, Hulburd not being served with process and his statements not being binding upon the other defendants appearing in the cause.

A. (continued). Hulburd stated that he had at last, he thought, hit upon a plan by which we could collect the Baker judgment, which he had been trying to do for a good while in the courts or of the county commissioners of Lake county, but had never succeeded. He said that Parks had agreed to withdraw all opposition, and, in fact, help him to procure a settlement with the county; that Parks said that——

Defendants' counsel objects to this method of proving the statements of Mr. Parks, the defendant, because it appears that Mr. Hulburd was the agent and attorney of the plaintiff in this action and is not before this court as a party defendant.

A. (continued). Parks said that the county had got clear of a large portion of its indebtedness now, and was in a fix by which it could pay its judgments, and that he thought the county board might be induced to pay the interest on this judgment, at any rate, and maybe something on the principal, and make an assessment—make provision by assessment for paying the balance; that
44 Parks had said that we could not, however, get the board to settle for anything in which Baker was connected, as there was some prejudice against Baker on account of his mandamus suits; that there was one of the commissioners especially hostile and he was opposed to him. There was some prejudice in the board against Baker on account of the trouble they had been to on account of his suits—mandamus suits—and that one of the commissioners was especially hostile to him, and if he would assign that judgment to somebody else we could get the board to settle it, and that he would favor a settlement. He proposed—Parks proposed—that we make N. P. Seeley the assignee, and I told him that wouldn't do. "Well," says he, "I knew that you wouldn't put it in his hands, but I suppose they could make me the assignee if that would do. I knew that I wouldn't be afraid to trust him." He said that I could get Baker to make the assignment to him, and that he would only be necessitated to keep that for a few days, and would returni t to me after showing to Parks at Leadville; that it was necessary to have it in order to show it up there to Parks and the commissioners;

that it was in his hands, and he, Hulburd, could then reassign; that this would be settled, and that it could be got through that way. I inquired how it could be got through that way. Well, he didn't care about explaining; he said he didn't. He said Parks said he could get it fixed that way, and if we could get Parks on our side it was a great matter, because he had given us a good deal of trouble already and would probably give us a great deal more if he chose, and that he had always been afraid that that judgment would be opened up.

Q. Who had?

A. That Hulburd had. Hulburd said he had always been afraid that Parks would get that judgment opened up yet and cause a good deal more bother, and that it had so turned round
45 now, fortunately for us, that Parks was willing to have it settled. I inquired how he became willing. Well, says he, "There is a judgment behind ours that he wants to settle; there is a coterie of speculators here interested in it—and mentioned their names, including Wood and Beeley, and he thought Parks might possibly have some interest in it. It was a judgment obtained on the Winters warrants, some forty-five thousand dollars, by Rollins, and he thought they wanted that settled and, ours being first in order, they wanted it got out of the way so that they could reach that. He gave those as his reasons, Hulburd did. Well, finally, I concluded I would write and recommend it to Baker that he make the assignment, which he did. Hulburd came back on the 28th of May to my house.

Q. First in order, about the assignment, did you get that right away?

A. Oh, yes; the assignment came. It was dated on the 25th. This was some time between the 15th and the 20th when Hulburd was there. The first time it was forwarded to me by mail and Hulburd appeared at my house again on the 28th.

Q. What assignment is that?

A. The assignment of this judgment from Lucien Baker to E. M. Hulburd.

Q. Where is it?

A. I guess it is among those papers there.

(Referring to those in the possession of Mr. Reed.)

Q. You saw it yesterday, didn't you?

A. Yes, sir; isn't it among those papers?

Q. No; you saw the assignment filed.

A. It is filed among the papers at the court-house; yes.

Q. What was the date of that assignment, if you remember?

A. The 25th of May, 1886; that is my recollection of it.

Q. The one that is on file now, up here?

A. Yes, sir.

Q. What paper, if any, came with that?

A. There came with it a receipt and declaration of trust or
46 something, whatever you may call it.

Q. (Handing witness a paper.) Look at this and state whether that is the paper that came with it.

A. No; this is not the paper.

Q. No; that is the copy of the assignment (handing witness another paper). Is that the paper that came with it?

A. Yes; that is the paper that came with the assignment, which he asked me to have Huldurd sign.

Q. You need not state about the instructions.

Complainants' counsel here offers the said paper in evidence, which is admitted and marked Exhibit A and hereto attached.

Q. What did you do with that?

A. When I gave the assignment to Mr. Hulburd I asked him to read this receipt and sign it.

Q. Did he do it?

A. He did.

Q. Did he deliver it to you at that time?

A. Yes, sir; he did.

Q. Now, go on from there, Mr. Higginbotham, and tell the next thing in order that transpired.

A. He left my house stating that he was going to Leadville that night.

Defendants' counsel objects to any other statements of Mr. Hulburd by reason that it is hearsay against the defendants Seeley, Parks, and Wood.

Q. What date was this?

A. On the 28th of May.

Q. He left, you say, that night?

A. Yes; I supposed he had gone to Leadville. I received a letter from there stating he had not arrived, and that he must be in Denver yet. This put me upon inquiry and I went to his hotel; he wasn't there. I talked with the clerk of the hotel. He said he had been there for two or three weeks, and that he was out a good deal at night. I inquired about whether he was gambling or not,
47 but he didn't just say that he was, but intimated that might be his business, and I got a little alarmed about his gambling and concluded I would make him give up that assignment. I wasn't afraid of his selling it; didn't think of such a thing. I had full confidence in his integrity, but, supposing that he was gambling, I thought it was better to get it out of his hands for fear he might pledge it or give it away to raise some money, so I waited until I caught him and asked him for it, and he said that he had sent it by mail to Leadville, to Parks. I complained that he should send a paper like that away out of his hands; he said it was all right, that Parks would get it, and even if it was lost he could re-establish it, &c., and I told him I wanted it back and asked him about his habits and he acknowledged he had been gambling. I told him then that I wanted it back; well, he said he would get it back for me; I told him to give me an order upon Parks for it.

Q. What day was this on?

A. This was on the 3rd of June. He wrote an order on Parks to deliver that assignment to T. H. Baker, Lucien Baker's agent at Leadville.

Q. (Showing witness another paper.) I will ask you to state if that is the order referred to in your testimony.

A. That is the order referred to.

Q. I will ask you to state if that is E. M. Hulburd's writing, and if you saw him sign it.

A. Yes, sir; I saw him sign it and saw him write it.

Complaintiff's counsel here offers said receipt in evidence, which is admitted and marked Exhibit B and hereto attached.

Defendants' counsel objects to the introduction of the said receipt marked Exhibit B in evidence, because it was executed by Mr. Hulburd, who was the agent of the plaintiff in this action,
48 and it is not in any way binding upon the defendants who are appearing and defending and is not relevant to the issues between the parties.

Q. Did you state what you did with that?

A. I sent that to T. H. Baker, Lucien Baker's agent at Leadville, and wrote him to call on D. E. Parks as soon as possible and get that assignment.

Q. Now go on, Mr. Higginbotham, and tell what next transpired.

A. Well, I seen Hulburd off on the 5th, I think, from here. I talked with him repeatedly about this matter and he said that he would go up there—I didn't receive this assignment back again—he said he would go up there and he would find out what was the reason and write back again. He, Hulburd, said he would go up there and get this assignment and forward it to me. Well, he wrote on the 6th that he had arrived there.

Q. (Handing witness a letter.) I will ask you if that is the letter you received next after he returned home.

A. Yes; that is the letter.

Q. State whether that is E. M. Hulburd's writing.

A. That is E. M. Hulburd's writing.

Plaintiff's counsel here offers in evidence the said letter, which is marked Exhibit C and hereto attached; and defendants' counsel objects to the introduction of Exhibit C as being irrelevant, immaterial, and hearsay as between the parties to the present issues.

Q. I will ask you to state what next occurred.

A. I received other letters soon after that with reference to this business.

Q. (Handing paper to witness.) I will ask you to look at this letter and state when you received that and in whose writing it is and from whom you received it and whether you received it by mail.

A. I think I received this on the 9th, from Hulburd; this
49 is E. M. Hulburd's handwriting.

Q. Did you get it out of the post office?

A. I got it out of the post office.

Plaintiff's counsel here offers that portion of the said letter commencing on the fifth line and ending on the ninth line, enclosed in parenthesis, which is admitted, marked Exhibit D, and hereto attached, defendants' counsel objecting to the introduction of this portion of the said letter because irrelevant, immaterial, and hearsay as between the parties to the issues.

Q. Now state, Mr. Higginbotham, whether you saw Parks after the receipt of that letter.

A. I saw Mr. Parks at the Windsor hotel on the evening of the 9th or after dark; about seven o'clock, I think.

Q. Was it before or after the receipt of that letter?

A. After the receipt of that letter. I had it with me and asked him. I told him that Hulburd had requested me to call and see him and talk over the Lucien Baker judgment matter with him. I told him I supposed he thoroughly understood it just as Hulburd and I did, that the assignment was made purely on his recommendation, for the purpose of procuring a settlement with the county; that Hulburd had so informed me and I supposed it was correct. I asked him what was the chance of getting a settlement. Well, he didn't know. They met in July next, he said, and that he would see what could be done. He could probably get the interest paid and maybe get them to make an assessment for the payment of the principal or part of it next year. I asked him what amount of funds were on hand in the office. He said that there was—I think he said near about nine thousand dollars; something like nine thousand dollars on hand, and that the amount was all the time accumulating and the county was in a good fix. It had throwed off a great portion of its indebtedness and could now pay its warrant indebtedness and bond indebtedness, and could now pay *pay* its judgments.

Q. What did you say to him, if anything, at that time about the assignment?

A. I remarked to him, as I said before, that I supposed he understood that it was assigned——

Q. No; where it was. What did you say to Parks about——

A. Wait until I get there with this other. I told him that it was assigned on his recommendation, as I understood, for the purpose of collection.

Q. What did you say to him, if anything, at that time about the paper executed by Hulburd and called an assignment?

A. This assignment from Baker to Hulburd, was that what you mean?

Q. No; the paper executed and delivered to you at the same time.

A. I told him that if he had any doubt about that, I says, "I have got a paper with me in which Hulburd acknowledges that Baker is the owner and controller of this judgment, but it is merely assigned to Hulburd for the business of collection purposes;" and, says I, "I will show it to you." He said it was not necessary. I had considerable talk with him. I believe that that is the purport of it.

Q. Did you have a talk with him anything about this matter of who had possession of the original assignment?

A. Yes; I asked him, I says, "Hulburd wrote me you had forwarded that to him when he was down here, but had sent it to the wrong hotel—to the Windsor, and he was stopping at the Markham—and that he didn't get it, and that was the reason he could not forward it to me by mail." "Yes," says he, "I sent it down addressed to Hulburd at the Windsor. I told Parks I had called at the Windsor and had the clerk run over the letters there, but he could not find it; could not find any such letter to Hulburd or any letter to Hulburd, and didn't recollect of having sent it back. Parks said, I suppose he forgot it, but it was sent there."

Q. Who said that?

A. Parks says, "I suppose the clerk forgot and had forwarded it back to Hulburd, who has got it by this time."

51 Q. What day was this? Do you know whether it was the 9th or the 10th?

A. This conversation was the evening of the 9th; that is my recollection.

Q. Well, go on from there and state if you had any other conversation with Parks.

A. Well, I told him that I had become uneasy about Hulburd's gambling and that I wanted to get this out of his hands just as soon as I could. Says I, "I am not afraid of his honesty; he has always proved honest, but a gambler cannot be trusted, and he might trade it or put it out of his hands to raise some money while gambling, and I had rather have it back just as quick as I can get it." I had written there repeatedly to him, and he replies it is not in his hands, and it has gone backwards and forwards from Leadville to Denver by mail, and if before I get this from Hulburd he undertakes to dispose of it in any manner, why you can state. They would most likely inquire of you, being the county attorney and acquainted with the value of such a paper, and having been the attorney in the case they will most likely inquire of your as to its value, and you can state to them that Hulburd is not the owner, but that it was assigned to him by Lucien Baker merely for collection purposes and belongs to Lucien Baker. He said he would do that.

Q. Was that all he said he would do?

A. That is all, I guess.

Q. Did he say anything about notifying you?

A. Oh, yes; he said he would notify me. I told him to telegraph me at once if he heard of any attempt of Hulburd's to do anything with that paper—heard of Hulburd's doing anything with that paper—before I could get it away from him.

Q. Did you get any notice from him?

A. I had no notice from him.

Q. When did you first learn it had been assigned by Hulburd?

52 A. Well, I first learned that it was assigned by Hulburd, I think, on the—let me see. (Witness consults memorandum.)

Let me see if I can fix that date. I went up there on the 13th of June. I had found out that he had put the assignment from Baker to him upon record up here in the United States court. I then went up to see what it meant.

Q. How did you find that out?

A. I found that out by his letters to me.

Q. No; the recording of this assignment. How did you find that out?

A. The recording of that. Hulburd write to me that Parks had advised him to put it on record up here with the papers and with his assignment to him—that is, Baker's assignment to Hulburd—to put that assignment upon record up here in the United States court among the papers—and that he had done so in compliance with Park's request.

Q. Hulburd wrote you he had done so?

A. Yes.

Q. Well?

A. I went up to Leadville on the 13th of June, and I went for the purpose of getting Hulburd to assign that judgment back to Lucien Baker, so that it could be put on file here in this office. When I went up there I asked him how he came, contrary to my instructions, to put it on file in these papers, and why he didn't return it to me. He said that Parks——

Objection by defendants' counsel to the statement of Parks as irrelevant, immaterial, and hearsay as to the parties.

A. (continued). He said that Parks wanted it so, and he thought it was better to keep all right with Parks, and so he put it upon record. He thought it was the best way in order to get it settled. Well, then I asked him if he would just make an assignment of that to Lucien Baker. "Oh, yes," says he, "certainly."

53 Q. Did he?

A. Yes; he made an assignment before I returned. That was done on the 26th of June. He assigned it to Lucien Baker; not to Lucien Baker, but to me; said he had better assign this to Higginbotham; not to Lucien Baker.

Q. (Showing to witness a paper.) Look at that, Mr. Higginbotham, and state if that is it.

A. Yes; he made this assignment to me. He says, "It *it* had better *me* made to you and then you can assign to Lucien Baker.

Q. Did he make and deliver that to you?

A. He made and delivered this to me.

Q. You saw him sign it?

A. I saw him sign it.

Plaintiff's counsel here offers the said assignment in evidence, which is admitted, marked Exhibit E, and hereto attached.

Q. (Handing witness another paper.) I will ask you to state what that paper is.

A. That is the assignment which I made to Lucien Baker.

Q. Is that your signature?

A. Yes, sir.
Q. Who drew it up?
A. I guess—I believe that Lucien Baker himself drew this up.
Q. And you executed it?
A. I executed it.

Plaintiff's counsel here offers in evidence the said assignment, which is admitted and marked Exhibit F, and to the admission of which defendants' counsel objected because irrelevant and immaterial. Plaintiff's counsel then stated that it was not offered as showing title to the judgment, but simply as an acknowledgment by Hulburd. Thereupon defendants' counsel further objected that any acknowledgment by Hulburd cannot affect the rights of the
54 contesting defendants in this case, and especially as these instruments are dated subsequently to the record of the assignment from Hulburd to the defendant Wood.

Q. Now, Mr. Higginbotham, you may state if you have had any conversation with any of the defendants, and, if so, who, concerning the value of this judgment, and when that conversation occurred and where it occurred.

A. I had a conversation with D. E. Parks and N. P. Seeley here in Denver, at the corner of Arapahoe and Sixteenth; one evening as I was returning home they stopped me. It was about, I should think, two months before Hulburd applied to me for this assignment; it was, at any rate, after the decision of the supreme court in the Seeley and May case, for Parks asked me at the time if I had seen that decision.

Q. I don't care about that; state the conversation about the value of the judgment.

A. I was going on to state it, and this introduced it. He said that by that decision Lake county had thrown off the major part of her indebtedness, got rid of a large portion of it, and then Seeley, I think it was, asked me if Baker—asked me about the Baker judgment, if there was any raised warrants in the amount for which Baker had obtained judgment, and I told him there was quite a lot of them. He asked me if there was any deduction made on account of these warrants. I told him the raised part was all knocked off before the judgment was obtained. Then Parks asked me what Baker would take for that; he said he could not collect it; he had tried it two or three times in court, to mandamus them, and failed, and that all that the commissioners would do would be to issue another warrant for this judgment in payment, and that is all that we could coerce out of them. He said, however, if Lucien Baker would take fifty cents to the dollar—he asked me how much it amounted to. I told
55 him about twenty thousand dollars. Well, he said, "if Lucien Baker will take ten thousand dollars for it I will try and get the county board to pay it."

Q. Who said that?
A. Parks.
Q. In the presence of Seeley?

A. In the presence of Seeley. We were all talking together, and Seeley talking casually, all talking about the judgment.

Q. Did Seeley have anything to say about the value of it?

A. No; I don't think he did. I don't recollect of his saying anything about the value of it, but Parks told me that, and I told him I didn't think Baker would discount the value heavily to get the cash; he could wait; it was drawing ten per cent. interest. Well, says he, "you can write him that—that if he will take ten thousand dollars for that I think I can get it paid."

Q. Who said that?

A. Parks.

Q. In the presence of Seeley?

A. In the presence of Seeley.

Q. Go on and state anything else you think of, Mr. Higginbotham, that I may have omitted to ask you.

A. When I was in Leadville about the 15th or 16th of June I tried to see Parks again and have a talk with him about the matter, but he wouldn't talk with me at all; turned off and said, says he, "I have not time," and left me rather abruptly.

Q. Seeley there at that time?

A. No. Seeley came in, maybe, I think, on the 15th, perhaps.

Q. Did Seeley remain there some time; and, if so, about how long?

A. Yes; Seeley was there during the week; I think he was there during that week, from that time on; this was the 15th, on Tuesday, I guess, and he stayed there until Saturday, I believe, maybe longer, I don't know, and it was assigned on the 17th to S. N. Wood. I didn't know anything about it at the time, and after this
56 assignment I then got a chance to talk with Parks; he came to Hulburd's office to see him, and I was there, and I talked with him, and he again stated that if he saw any attempt of Hulburd's to put this out of his hands he would let me know.

Q. Was that after the assignment?

A. After the assignment.

Q. Well, now, you say the assignment was on the 17th?

A. Yes; the assignment was made on the 17th, according to the instrument.

Q. And what day was it you say that he came there and told you he would try to prevent it?

A. I can't recollect just what day it was, but it was, maybe, the 19th—the 18th or 19th. He told me that after this was done, and my first interview with him he wouldn't talk with me at all—my first attempt to interview him.

Q. Did you have any talk with Hulburd there? I believe you stated you did, though, after the talk with him at this time about the reason for his not sending it back to you.

A. Yes. He told me that it was all right, and made this assignment to me at that time of this judgment.

Q. That was on the 26th—the day it bears date—was it?

A. Yes; on the 26th. I expected to come home, but didn't come for a few days after that time, and when I got ready to go I asked him to make me that assignment, and he did.

Q. Well, now, was you present at an interview between Mr. S. N. Wood and Mr. Baker?

A. Yes, sir.

Q. State what transpired there, as near as you can remember.

A. That was on the 5th day of August, I think. Baker and his son, a boy twelve years old, and myself went into the bank.

Q. Here in this city?

57 A. Yes; in this city; went into the First National bank, and after introducing myself to Mr. Wood I introduced him to Mr. Baker. I told him we had a little business with him, and he invited us into a private room or into a room in the bank building, to the right of his place as cashier, and Baker told him that he wanted to talk about the assignment of a judgment which he understood he had obtained, a judgment which he had obtained against Lake county. Says he, "Yes; I got the judgment against Lake county; paid twenty-five hundred dollars for it." "The man who got the money gambled it away," says he, afterwards. "Well," says Baker, "Mr. Hulburd was my attorney, and I assigned that to him for the purpose of collection only. He had no right to sell it or transfer it to anybody else," and pulled out a paper and wanted to show it to him.

Q. What paper?

A. Well, it was Hulburd's receipt for it.

Q. The one you have just offered in evidence?

A. Yes; the one we have just offered in evidence. Mr. Wood would not read it; said he didn't care a damn for the papers; and, after talking rather rudely for a few minutes, he got up, and says he, "If that is all the business you have got with me I am going." Well, says Baker, "stop; hold on; I want to talk further with you." "No; I won't talk anything more about it. If you want a lawsuit pitch in. I got this. I paid twenty-five hundred dollars for it, and I am going to hold it. I consulted a lawyer before I did it and knew what I was about," he says, "and the only way you can get it is through a lawsuit," and he went out and just left us in that way, and we had nothing to do but to go out.

Q. Have you had any other conversation with him?

A. Never anything.

Q. But heard of him?

A. Yes. I never talk with a man who refuses to talk with me.

58 Q. Did you say anything at this interview except to introduce him?

A. No; nothing except that.

Q. Mr. Higginbotham, are you acquainted with the value of Lake county securities at this time, in the shape of a judgment like this—that is, the value of this judgment?

Defendants' counsel objects to the question on account of the time to which the question is addressed and being immaterial and irrelevant as to the present value of the judgment.

A. I think I am.

Q. What was the value of it then, taking into consideration the condition of Lake county securities in that shape?

A. I considered it was worth its face; that judgment against Lake county, bearing ten per cent. interest, must be paid; I thought it was worth its face.

Q. What is the value of it now?

Objected to as immaterial and irrelevant.

A. I think it is worth about the same now. By its face I mean the face and interest—the accrued interest.

Q. I will ask you what the fact was as to whether you would have discounted that judgment at that time to any amount or any considerable amount as the agent of Mr. Baker.

Objected to by counsel for defendants because it is immaterial what the witness would have done.

A. I would not have recommended its being discounted unless he really needed money; I wouldn't have recommended its being discounted at anything; still, at the same time, I would have advised him this way: that it may cost some legal expenses; they might deduct what they would be; probably he might
59 take off something of that kind; but I considered it worth about its face and interest.

Q. Did you have any knowledge at any time that Hulburd had tried to sell this judgment at the banks in this city or elsewhere?

A. I never had any knowledge or intimation of the kind until I seen it set up in Wood and Seeley's answer. Let me correct that a little. I believe I heard Wood say that he was trying to sell it.

Q. At this interview?

A. Yes.

Q. In August?

A. Yes; in August, the 5th, he said that he had been trying to sell it here. I think it was August the 5th that Wood said this.

Q. Have you looked to ascertain what day of the week it was that you had this talk with Parks and which you say was on the 9th day of June?

A. No; I got that date from Hulburd's letter and knowing about the time after receiving that letter that I had the talk.

Q. You haven't ascertained, then, when the 9th of June was as to the day of the week?

A. No; I can tell you, though.

Q. You may state if you can.

A. (After referring to calendar.) It was on Wednesday.

Q. That is, the 9th day of June would be on Wednesday?

A. Yes, sir.

Q. Were you acquainted with Mr. Hulburd's financial standing in this community and in Leadville at that time as to whether he had any means or credit financially?

Objected to by defendants' counsel as being immaterial and irrelevant.

A. I am.

60 Q. I will ask you to state what it was.

Objected to as immaterial and irrelevant.

A. He was very poor in property. He had nothing visible and he was most always behind-hand in money matters. I frequently made him small loans.

Q. I ask you to state if you knew what his reputation was in that community—his standing.

A. His reputation was rather a poor man; behind with his rents for his house frequently, and he owes Lucien Baker now considerable amount for rents of his office that he has not paid him—over one hundred dollars.

Cross-examination:

Q. Where is Mr. Hulburd now?

A. I don't know.

Q. When did you see him last?

A. It was from the 20th to the last of July. I can't just recollect. I seen him in Leadville.

Q. This year?

A. Last year.

Q. 1886?

A. Yes.

Q. Did you live in Leadville before he did or afterwards?

A. Oh, I was living here and was up there on a visit and seen him at that time. I was living there before he did.

Q. You left him at Leadville when you came away?

A. Yes; he left, I think, on the 5th of August.

Q. He left Leadville on the 5th of August?

A. Yes.

Q. You get that from information you received from others?

A. Information I received from people who knew him.

Q. When did you last hear from him?

A. I seen a letter that he wrote back, that he left at Walsenburg, and was forwarded to his wife, and that was the last news I had of him.

Q. When was that?

A. I think the letter was written about the 20th or 21st of August; it was written some time in August, I can't recollect just the date.

61 Q. 1886?

A. August, 1886, he wrote back to his wife, but I have never seen that letter. I have seen a copy of it.

Q. Have you seen or heard of him since?

A. I have not seen or heard of him since. I have heard rumors in regard to him, but no definite information.

Q. The letter was written to his wife; do you know where his wife is?

A. Married again and living in Leadville.

Q. Married again, you say?

A. Yes.

Q. Were they divorced?

A. She got a divorce afterwards.

Q. Do you know when that was?

A. I don't recollect just when she got the divorce. I suppose about six months ago.

Q. It was after he left here?

A. Yes; after he left. I made a good many efforts to find out where he was, but could not.

Q. You say it was represented to you that the county board of Lake county would not settle with Baker on account of some prejudice against him. Do you know whether there was in fact any prejudice against him?

A. I should judge so.

Q. Do you know what the occasion of it was?

A. I don't know any occasion for it except that Baker had brought suits against the county commissioners there and given them some trouble.

Q. In connection with this judgment?

A. In connection with this judgment.

Q. In all those suits, wasn't Mr. Hulburd attorney for Baker?

A. Yes, sir.

Q. So that the person who was active in the prosecution of that litigation was Mr. Hulburd himself?

A. Yes.

Q. Didn't you think there would be as much hostility to Mr. Hulburd as to Baker?

A. Yes; but, then, I had confidence in Mr. Hulburd and I should have followed his advice, anyhow. I didn't place much stress upon what he said, but I just had confidence in him. I had employed him for a long time—six or seven years.

62 Q. And he gave a reason for his advice, didn't he?

A. Yes; he said that Parks wanted it so and said he could get it through.

Q. That Parks wanted it assigned to some other person and suggested Seeley?

A. Yes; and then Hulburd said it was no use to do that—that would not do; but he could get it assigned to him if that would do, and Parks said that would do.

Q. It was then Hulburd's suggestion that that assignment should be made to Hulburd, although he was the attorney?

A. Yes; although he was the attorney, he said that.

Q. Then you sent to Baker for such an assignment, did you?

A. I wrote to Baker that Hulburd thought he could get that paid, and that Parks had agreed to get it through and get it settled if it was assigned to Hulburd.

Q. Then the judgment came back to you assigned by Baker?

A. Yes.

Q. The assignment that has since then been placed of record, filed in the court?

A. Yes, sir.

Q. And it is the same assignment, isn't it, that is set up in the answer in this case, dated May 25th, 1886?

A. Yes, sir.

Q. The answer sets forth a correct copy of that assignment, executed and acknowledged?

A. Yes; I think so. I have not looked it over carefully; I rather think it is a correct copy.

Q. In this conversation at that time Hulburd remarked he had been afraid Parks would get this judgment opened up and give you a good deal of trouble?

A. He said he had formerly been afraid of it, and that he was very happy now to find that circumstances had so turned around that Parks had become willing to have it settled.

Q. Did he give a reason why he had been afraid the judgment would be opened up?

A. Yes; he said on account of the decision against the
63 warrant, and that such warrants were included in the judgment.

Q. On account of the fact that the warrants that had been issued in this case upon which the judgment was rendered were invalidated. Was that it?

A. Yes.

Q. By reason of the constitutional limitation of indebtedness?

A. No; by reason of the decision that had been had in this court against the warrants, and that he was afraid of that, but that Parks had been willing to pay the judgments.

Q. Now, you gave this assignment to Mr. Hulburd about the 28th day of May, did you?

A. Delivered it to him on the 28th day of May.

Q. And received from him the receipt and acknowledgment at the same time?

A. Yes.

Q. Mr. Hulburd, however, remained in the city for some time after that?

A. Yes, sir; he was here up to the 5th, I think, of June.

Q. Did you ever find out whether he had as a matter of fact mailed this assignment to Mr. Parks at the time he said he had?

A. No; I could not find that out.

Q. All you know about it is Hulburd's statement?

A. That is all. Oh, Parks stated that he had the assignment and that he had forwarded it back to Hulburd here to the Windsor. Parks himself said that. Whether either Hulburd's or Parks' statement is true I don't know.

Q. When was this paper which has been introduced in evidence as Exhibit B returned to you?

A. Well, it was returned in October to me by T. H. Baker.

Q. I believe you stated that you had a letter from this man T. H. Baker soon after sending him this order?

A. Yes.

Q. Have you that letter here?

64 A. I don't know whether I have or not; I had it; I may be able to find it.

Witness here makes search for the letter, but, failing to find it, agrees to make further search for it and produce it if possible.

Q. You say that after the receipt of your letter bearing date June 8th, from Hulburd, and which you have introduced in evidence as Exhibit D, that you called at the Windsor hotel to talk with Mr. Parks?

A. Yes, sir.

Q. Have you any circumstance to fix the time of that conversation other than the receipt of that letter?

A. No; nothing except I noted the time when I got back.

Q. Where did you note it?

A. Among some of my notes.

Q. Where are those notes?

A. I would have to look for that now. I don't know where, but I took down dates as far as I could.

Q. Have you the memorandum here in which you took down notes?

A. I don't know if I have or not.

(Witness here looks among his papers, but fails to find it.)

Q. I understood you to say just now that you made a note of the date of the calling upon him in some memorandum that you are keeping?

A. There is a note on the back of this letter, Exhibit C. I got at it in that way; but if I had that memoranda, it is taken from the dates on the back of letters, of receiving them.

Q. Didn't you make a memorandum at the time?

A. No; not at the time.

Q. When did you make it?

A. I made the memorandum on the back of the letters of when I received them, and then I depend upon my recollection as to the time after receiving them that I called upon Parks.

65 Q. Then you didn't make any separate memorandum of the conversation with Parks—of its date?

A. No.

Q. And you have nothing, then, to fix it, except this letter that you speak of?

A. No.

Q. What time of the day did you see Mr. Parks?

A. It was about seven o'clock in the evening.

Q. Whereabouts in the Windsor, in the rotunda?

A. In the rotunda, to the right of the office as you go in, on the right-hand side on the settee there.

Q. Who else was present within hearing during this conversation?

A. I don't know that anybody was.

Q. Mr. Parks talked freely with you at that time, did he?

A. Yes, sir.

Q. He told you at that time that he had sent the assignment to Mr. Hulburd at the Windsor hotel, did he?

A. Yes, sir.

Q. Did he say when he had sent it?

A. No; he said he kept it a short time and sent it back to the Windsor hotel.

Q. But Mr. Hulburd had left here on the 5th for Leadville?

A. He had left here on the 5th for Leadville.

Q. Did he claim he had sent the assignment to Mr. Parks some time before that?

A. On about the second or third, I guess. I can't just recollect.

Q. Did Mr. Parks give any reason for returning it to Mr. Hulburd at the hotel?

A. No; he didn't say; merely that he had mailed it back to Hulburd.

Q. Was Hulburd stopping at the Windsor hotel while he was here?

A. No, sir; he accounted for that, that Hulburd didn't receive it, because he was mistaken in the place that Hulburd was stopping at; he thought he was stopping at the Windsor when he was stopping at the Markham.

Q. This was on the 9th. Did you inquire at the Windsor
66 as to whether there was any mail for Hulburd?

A. Before I seen Parks.

Q. How did you come to inquire at the Windsor before that?

A. Hulburd had written me.

Q. By the letter of the 8th, you mean?

A. The letter of the 6th, I think. At any rate, prior to Parks' arrival I had inquired.

Q. When were you at the Windsor looking for it?

A. After Hulburd's letter informed me of the fact; I suppose the next day.

Q. You say that you went to Leadville on June 13th. How did you happen to go?

A. June 13th?

Q. Yes.

A. Well, I went up to get an assignment from Hulburd back to Lucien Baker. That was my main object, and I had some other business with him.

Q. I understood you to say that you went after finding that he had recorded that assignment from Baker.

A. Yes.

Q. How did you learn he had recorded that assignment?

A. He wrote me he did.

Q. Where is that letter?

A. I think it is among those.

Q. The letter of June 6th says that Parks had advised him to have it recorded.

A. That letter, among other things, says that, and that I should file it with the clerk of the United States court for reference if necessary.

Q. That was on the 6th?
A. Yes.
Q. Did you examine to see whether it was recorded there?
A. At the United States court? No; he wrote me that he had recorded it.
Q. Where is that letter?
A. I don't know whether I can find it or not; perhaps I can if I search for it.
Q. Did you get that letter before going up on the 13th?
A. Yes.

67 Q. How soon after that conversation with Parks on the evening of the 9th did you discover that this was recorded?
A. I don't know how soon it was; some time after that, though; it was recorded on the 11th.

Q. Well, now, on the 9th you had a conversation with Parks; this instrument was recorded on the 11th, and on the 13th, as you stated, finding it was recorded, you went to Leadville. When and how did you learn that it was of record?
A. From that letter from Hulburd.
Q. When was that letter received?
A. I don't recollect.
Q. Did it say how he had filed it for record, whether he had sent it by mail?
A. He didn't say that, I recollect. I will look for the latter.
Q. After seeing that letter didn't you make any investigation to see whether it was on file?
A. I took it for granted he had done it.
Q. At that time was the other instrument which Hulburd signed the receipt for in your possession, the receipt he had signed on the 28th day of May?
A. Oh, yes; it was in my possession.
Q. How long did you retain possession of that instrument?
A. I have had it ever since, I believe.
Q. It never went to Baker?
A. No.
Q. You retained it all the time?
A. I retained it; yes.
Q. After learning that this assignment had been recorded or filed with the clerk of the court why didn't you take some steps to file the acknowledgment or receipt of Hulburd?
A. Well, because I had perfect confidence in Hulburd, and I didn't know what his arrangements might be with Parks, and I preferred to go up and see.
Q. You preferred going to see him before you filed any paper in court?
A. Yes.

68 Q. Did you consider the question at the time as to whether you should or not file that receipt of his?
A. Yes.
Q. After you had learned he had filed the assignment?

A. Yes; I thought about it, but thought it would perhaps interfere with his arrangements for collecting with Parks.

Q. Now, during all this time you had been endeavoring to get the assignment back and there had been correspondence about that, and after you found your efforts had failed you then discovered it had been put on record. Didn't that shake your confidence in Hulburd?

A. No; I had full confidence in Hulburd; notwithstanding that I thought when I saw him I would get the assignment from him to Lucien Baker and that would settle it.

Q. You wanted that assignment simply because the other assignment had been placed of record?

A. Yes, sir.

Q. You had been trying to get the other before it was recorded?

A. Yes.

Q. He knew you had been trying to get it by your correspondence?

A. Yes.

Q. Yet when he knew that, then he placed his assignment of record?

A. Yes.

Q. And you still had so much confidence in him that you didn't place the other of record?

A. I asked him the reason why he had done that contrary to my wishes, and he said that Parks thought it was best, and so he put it on record.

Q. Now, that assignment was a general assignment, wasn't it, saying "I hereby sell, assign, transfer, and set over to E. M. Hulburd all my right, title, interest, claim, and demand" in that judgment, and signed by you?

A. Yes.

Q. Dated before it had been recorded?

A. Yes.

Q. You knew, then, that that instrument vested the appar-
69 ent title of this judgment in Mr. Hulburd, didn't you?

Objection by plaintiff's counsel that he didn't know anything of the kind.

A. I was aware that it was an assignment to Hulburd, but I thought this receipt protected it. I didn't know, either, the effect of putting it up there among the papers. I wasn't learned enough to know whether that would make much difference in the matter or not.

Q. Let us see, Mr. Higginbotham. You were lawyer enough to know that after that was recorded it was necessary for you then as soon as possible to get a reassignment, were you not?

A. Not if I had confidence in my attorney.

Q. But you went up there for that purpose, didn't you?

A. I went up there then for that purpose, to get a reassignment or get it. By that time I got uneasy, not being able to obtain it, and thought I would go up and make him reassign that judgment to Baker.

Q. And you did that, then, knowing that this other assignment had been placed of record?

A. Yes; after I had been informed of it.

Q. Then before you learned the assignment was, as a matter of fact, recorded your efforts had been directed to getting the original assignment back into your hands; after you learned the assignment was of record, then you wanted to get a reassignment recorded back to Baker, and you went to Leadville as quick as you could after learning it was of record?

A. Yes.

Q. And yet you didn't take any steps to protect the instrument you held by filing it or otherwise?

A. No; first, because I didn't know what it would be, and, next, because I still retained some confidence in Hulburd and
70 didn't want to interfere with his arrangements with Parks.

Q. But you said you went up to get a reassignment to Baker?

A. I wanted a reassignment to Mr. Baker to put the matter back in the same position it was in reference to the board of county commissioners.

Q. Then isn't it true that you no longer desired to help Mr. Hulburd in accomplishing that purpose, because you were now trying to get the title back in Baker again?

A. I still thought it was all right if he would assign to me. After I got the assignment I still thought it was all right, for I thought he wouldn't risk criminal prosecution by trying to sell it.

Q. I am talking about when you went to Leadville on the 13th, two days after this assignment was recorded; your object then was to get a reassignment to Mr. Baker. Then how is it that you were so interested in keeping the other instrument from being known so as to help Hulburd in his negotiations with the commissioners?

A. I will tell you. If I got a reassignment from Mr. Hulburd to Mr. Baker it would undo any assignment that he might make afterwards, as a matter of course, and therefore I wasn't aware at the time, wasn't lawyer enough to know, what the effect of merely filing it here at the court was. I was therefore careless about asserting it, but I was anxious to get the assignment to Baker, and then I thought that would end the thing and we would have no more trouble, and he would not assign it afterwards to anybody else.

Q. If that was your object only, why were not you satisfied with the instrument you had which acknowledged that he held it for collection and in trust for Baker? Why wasn't that sufficient for your purpose?

A. Simply because it didn't clear the record. An assignment from Hulburd back to Baker would be better than this receipt.

71 Q. Because it would clear the record?

A. Yes.

Q. Then you wanted this reassignment in order to file?

A. Yes.

Q. Very well; if you wanted something to file why didn't you file this paper? It showed the character of his holding.

A. For the purpose of squaring the record.

Q. You were lawyer enough to think it was desirable to do that?

A. Yes.

Q. Why did you delay until July 13th?

A. Well, because I thought it was all straight. Having seen Mr. Hulburd and having my confidence restored in him, &c., I thought it was all straight.

Q. While you were at Leadville you saw either Mr. Wood or Mr. Seeley there?

A. At what time?

Q. Between the 13th and the 26th of June.

A. Yes.

Q. Which of them or both of them?

A. I saw Mr. Seeley on the street; didn't speak to him. I saw Mr. Wood—oh, no! I didn't see Wood.

Q. About what time was it that you saw Mr. Seeley there?

A. I seen him during that week several times, I think. I can't just recollect what time.

Q. Did you have any conversation with him?

A. No.

Q. You were acquainted with him?

A. Yes.

Q. Now, where was the assignment to you made?

A. In Hulburd's office; it is acknowledged by T. H. Baker.

Q. It was dated the 26th of June, wasn't it?

A. Yes.

Q. Who prepared the form?

A. Hulburd.

Q. Is the form prepared in Hulburd's handwriting?

A. Yes.

Q. Was it prepared on the day when you first broached the subject to him?

A. Yes.

Q. Who opened the subject of that assignment?

A. Well, I talked to him. I says, "Hulburd, I want an
75 assignment from you that has been put on record to Baker." "Well," says he, "I will give it to you." After he commenced writing he says, "You had better take this assignment yourself and then you can assign it to Baker," and then he wrote it out and assigned to A. A. Higginbotham.

Q. He wrote it out to A. A. Higginbotham before you had further talk as to how it should be made?

A. No; I asked him for that assignment to Lucien Baker.

Q. Yes; and he wrote it out to Higginbotham?

A. He says, "You had better take this assignment yourself, and you can assign it to Baker, and it is all straight and all right," and I thought so, too, and I let him have his own way.

Q. This was on the 26th of June?

A. Yes, sir.

Q. Had you had any talk about the assignment with him after you arrived there on the 13th up to this time?

A. No.

Q. Had you not talked with him about his recording the other assignment during that two weeks?

A. No; I don't think I talked much with him about it—yes; I did talk with him about it.

Q. When did you have that talk with him?

A. Well, at various times in interviews there.

Q. And yet during all those conversations you said nothing about his reassigning to you?

A. The reason is this, as I stated before: I wanted to get some money out of Hulburd. He had collected for me between three and four hundred dollars on warrants sold, and I was exceedingly anxious to get that. He was getting it a little at a time on those warrants. One order was made by that man in the treasurer's office. A one-hundred-dollar check he received was given by Bayard, that man in the treasurer's office there. Bayard gave him a check for one hundred dollars while I was there, and that Hulburd
76 paid me, and he paid me fifty and sixty, &c. He paid me over three hundred dollars in small sums, and I was exceedingly anxious to get that business closed up. I didn't suspect there was any hurry about this other. I couldn't use it anyway until I got down here, so I just let it run on in that way whole he was paying me this money he was collecting on these warrants for me. He paid me small sums at a time. He paid me during that time fifty and sixty and forty dollars, &c., until he had paid me over three hundred dollars.

Q. He did, then, while you were there pay you some three hundred dollars in money?

A. Yes; that he had collected among his clients, as he said.

Q. What was the largest sum at any one time?

A. One hundred dollars.

Q. When was that?

A. When I first went in.

Q. Did he pay you anything along about the 18th, 19th, or 20th?

A. Yes.

Q. Do you know how much?

A. It was in small sums, you know; fifty and sixty, and so on.

Q. Did he seem to have any large amount of money at any time while you were there?

A. I didn't see only the money he paid me.

Q. Did you see him every day while you were there?

A. Yes.

Q. Was he drinking?

A. No.

Q. Do you know whether he was gambling or not?

A. I don't think he was, for I kept a little track of him.

Q. Did he deal with any particular bank there?

A. I don't know; I guess not.

Q. Did you make any inquiry of any bank while you were there?

A. I seen him go to the bank to get this check cashed, I recollect.

77 Q. When was that?

A. When I first went there—the first or second day after I got there.

Q. You didn't hear, then, while you were there, along about the 19th or 20th, of his having gambled away a large amount and lost a great deal of money?

A. No.

Q. If such a thing as that happened you didn't hear of it?

A. I heard it after I came away.

Q. That it had happened while you were there?

A. No; I didn't know when it did happen—I don't recollect it. I heard of his gambling when I got down here. I learned it from parties and from Baker after some time, but I didn't suspect anything wrong of him up to the time I went there in that way.

Q. While you were there was any attempt made on your part to have a settlement with the board of commissioner-?

A. No.

Q. Was there any further talk between you and Hulburd about bringing the matter to a settlement with the board of commissioners?

A. That I left for him to arrange, his own part, which would be in July—they would have a meeting.

Q. After you took the assignment you didn't expect him to manage it further, when you took the assignment on June 26th?

A. I didn't know but what he might.

Q. How was that left? Was he still looking after the matter of the settlement with the commissioners?

A. Oh, yes.

Q. Was it talked of?

A. Yes.

Q. At the time this assignment was made?

A. Yes; he said that would be all right; not to put this assignment which I got from him on record; it would all go through all right, and that he would attend to it at the proper time when the commissioners met in July.

Q. What time in July, do you know?

A. No; I don't know.

78 Q. Did you have any further correspondence with him about it after you came way?

A. Yes; I expect I had.

Q. Get any letters from him about it?

A. Perhaps I did.

Q. Have you them with you?

A. No.

Q. I see you have quite a number of papers with you in a large envelope.

A. Yes.

Q. Are they not papers connected with the history of this transaction?

A. Copies of letters, &c.—copies of the complaint and answer, &c.

Q. A great many letters and telegrams?

A. Yes.

Q. Hav-n't you in that envelope all the correspondence—hav-n't you kept all the correspondence together in this envelope?

A. Pretty much.

Q. Are there any letters from Hulburd written after you left there in June?

A. I believe there is.

Q. Will you see if there are and let me see what they are?

Witness here makes search among his papers.

Q. You have expressed your opinion that this judgment was worth at the time of this assignment its face with accrued interest. You knew at the time, did you not, that Lake county was indebted far in excess of the constitutional limit of indebtedness?

A. Well, I knew that there had been a decision against the warrants that had been issued in excess.

Q. Do you know what the taxable valuation of Lake county was at that time?

A. What time?

Q. In June, 1886.

—. ——.

Q. Do you know whether it exceeded five millions of dollars in taxable property?

A. No; I don't recollect.

Q. Do you know how much the county was indebted at the time?

A. What its nominal indebtedness was—bonds and all?

79 Q. Bonds and warrants.

A. Its debt of bonds was five hundred thousand dollars; perhaps some building bonds besides—maybe a little upwards of that—and they had between three and four hundred thousand warrants out.

Q. Which would make them between eight and nine hundred thousand dollars indebtedness, wouldn't it?

A. Yes; along there; I don't know exactly; I don't pretend to state exactly.

Q. I will ask you if you don't know that at that time the limitation of county indebtedness for counties whose valuation of taxable property exceeded five millions of dollars was one dollar and fifty cents on each thousand dollars?

A. Well, I can't say that I knew correctly, because I have not really paid close attention to it.

Q. Could you tell me whether the assessed valuation of that county exceeded sixteen millions at that time?

A. I knew that this decision removed a large portion of the debt and made the county finances very much better, and I knew that Leadville was gaining in wealth and that Lake county was gaining in wealth.

Q. But this decision removed the indebtedness by holding that a large amount of the indebtedness was invalid because issued in excess of the constitutional limit, didn't it?

A. Yes.

Q. Were not the warrants upon which your judgment was rendered issued in excess of the constitutional limit?

Plaintiff's counsel objects because the question of the validity of those warrants cannot be tried in this suit, and the question is therefore immaterial and improper.

DEFENDANTS' COUNSEL: The question is addressed to the
80 knowledge of the witness as to the value of this judgment and as to his knowledge of the circumstances affecting its value.

Q. Did you not know at that time that the assessed valuation of that county did not exceed sixteen million dollars?

A. Yes.

Q. Did you not know that the constitutional limit of indebtedness under that decision you have referred to would not exceed ninety-six thousand dollars, all told?

A. No, I didn't know particularly about that; what I based my judgment upon as to the value of the judgment against Lake county was that this decision had removed a large amount of the indebtedness, and that the county of Lake was continually growing richer. That is why I thought the judgment was worth its face.

Q. Did you not know that under that decision the warrants upon which your judgment was rendered were themselves invalid?

A. I suppose that under that decision that they were, some of the warrants, invalid, had they been standing as warrants; but being in the shape of a judgment by default, I then concluded that it would never be opened, and I had the county attorney's declaration that they would pay their judgments.

Q. The county attorney, however, in the conversation you had two months before, had suggested a compromise at fifty cents on the dollar, didn't he?

A. Yes.

Q. At that time he had told you that the judgment itself could not be collected, did he not?

A. He said that the only thing that they were bound to pay was to issue another warrant and that settled a debt against the county; that all the law required was another warrant in lieu of indebtedness.

Q. Didn't Mr. Parks say that the judgment itself could not be collected, in the conversation here?

A. Yes, he said we had made two efforts to mandamus them and failed.

81 Q. That was true, wasn't it?

A. Yes.

Q. And that the judgment could not be collected?

A. They would issue another warrant for it, he said.

Q. Then at the time of this assignmeny a conversation had previously occurred between you and Mr. Parks and Mr. Seeley in which Mr. Parks had remarked that the judgment could not be collected, but that if you would take fifty cents on the dollar he would try to get a settlement with the commissioners. Isn't that the case?

A. Previous to what time?
Q. Previous to the assignment.
A. Yes; previous to the assignment, that is true.
Q. At that time you had or Mr. Baker had made two unsuccessful attempts by mandamus to compel the collection of this judgment?
A. Yes.
Q. No judgments against Lake county rendered on that class of warrants had at that time been paid, had they?
A. Yes; I think they had.
Q. Can you tell me what one?
A. I am not positive, but I think one had been paid to Rollins and Young——
Q. Is that the one on the Witters warrants?
A. No; and perhaps somebody else; there had been some judgments paid.
Q. You don't know as a matter of fact in reference to that?
A. No; not positive.
Q. Nothing was said in that conversation I have just referred to by Mr. Seeley in reference to the value of this judgment, was there?
A. No; I don't recollect anything said about the value of the judgment.
Q. Had you dealt in any judgments against Lake county rendered on its warrants before the time of this assignment?
A. No.
Q. Had you known of any sales of that kind of judgments
82 the collection of which had been attempted and unsuccessfully?
A. No—I don't know. I think perhaps I had. I don't know.
Q. You hav-n't in mind any?
A. No.
Q. Then you had no knowledge of the market value of this judgment except from your impressions as to the liability of Lake county to pay it?
A. Yes, sir.
Q. That was all?
A. The liability of Lake county to pay it and the fact that her indebtedness—a large portion of it—was removed and the county was getting richer.
Q. Those circumstances; but you had no knowledge of it from any dealing in similar judgments, by assignment or otherwise, upon the market?
A. No.

Redirect examination:

Q. I will ask you if Hulburd paid you or Mr. Baker, to your knowledge, any portion of this twenty-five hundred dollars they claim he got.
A. No.
Q. Pay you ever?
A. No.

Q. You said, I believe, that this money that he did pay you on certain bills was paid by a check of the deputy sheriff, Byers?

A. Yes; by Deputy Clerk Bayard.

Q. Did you take that check yourself?

A. Yes.

Q. Do you know what that check was given to Hulburd for?

A. No.

Q. From his statements or otherwise, how had he come to get this check from Byers?

Defendants' counsel objects to the statements of Hulburd.

A. Hulburd said it was from script he had sold to Bayard.

A. A. HIGINBOTHAM.

Subscribed and sworn to before me this 4th day of October, A. D. 1887.

JOHN W. WEBSTER, *Examiner.*

83 By the consent of counsel the further taking of testimony in this cause was continued until Thursday, the 29th day of September, at 10 o'clock a. m.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, on this Thursday, the 29th day of September, A. D. 1887, at 10 o'clock, counsel for the respective parties being present, complainant produced EDWARD F. BISHOP, a witness of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposed and testified as follows:

By PLAINTIFF'S COUNSEL:

Q. I will ask you if you remember Mr. Parks presenting that assignment at the clerk's office of the United States court and filing it (handing witness paper).

A. This is the last one, isn't it?

Q. Yes.

A. Yes, sir.

Q. It was at the time stated there in that record?

A. Yes; the 21st of June, 1886.

Cross-examination.

By DEFENDANTS' COUNSEL:

Q. The 21st of June; that is the assignment, then, from Mr. Hulburd to Mr. Wood that is there mentioned?

A. Yes, sir.

Q. Do you know who brought in the assignment that was filed on June 11th from Baker to Hulburd?

A. You will have to ask me in a different way. I don't know that any assignment was filed on June 11th.

Q. In reference to the same judgment, the records of your office

84 show that on June 11th, 1886, an assignment was filed transferring that judgment from Lucien Baker, the plaintiff, to E. M. Hulburd. Do you remember by whom that was presented?

A. I do not; the record shows that E. M. Hulburd presented it.

Q. What circumstance is there that fixes in your recollection the fact that Mr. Parks presented the assignment that was filed on the 21st of June?

A. Well, the certificate to this document, this certified copy that I hold in my hand, shows that Mr. Parks filed it, and I personally remember his being there from the fact that I knew him very well, and this was a case in which some of my acquaintances were involved.

Q. Do you make a note or memorandum in your records of the person who presents such an assignment if he is not a party to the record?

A. No, sir; not necessarily; sometimes.

Q. In this case Mr. Parks was the attorney for the defendant, Board of Commissioners of Lake County, was he not?

A. I think he was. I don't know whether he is of record or not. I know in general terms that he has been county attorney for a great many years.

Q. Well, the endorsement here is D. E. Parks, attorney for defendant, is it not?

A. Yes, sir.

Q. Do you mean that that endorsement was on the back of the assignment?

A. Yes, sir.

Q. The original assignment is on file, I suppose, in the clerk's office?

A. Yes, sir.

Q. Well, independent of the noting of that in the indorsement, do you remember, as a matter of fact, that Mr. Parks personally brought in the assignment?

A. Yes, sir.

Q. Did you have any conversation with him about it?

A. Well, casually, I presume. I don't remember the details of it.

Q. Was anybody with him—did anybody come in with him at the time?

A. I think not.

85 Plaintiff's counsel here offered in evidence a certified copy of the assignment above referred to, which was admitted and marked Exhibit G and hereto attached. Plaintiff's counsel then stated that the plaintiff offered the above for the purpose of showing the connection of D. E. Parks with the transaction, and not for the purpose of proving the transfer of the judgment.

EDWARD F. BISHOP.

Subscribed and sworn to before me this 5th day of October, A. D. 1887.

JOHN W. WEBSTER, *Examiner.*

By stipulation of counsel the further taking of testimony on behalf of complainant at the present time is closed.

JOHN W. WEBSTER, *Examiner.*

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

To the honorable the judge of the circuit court of the United States for the district of Colorado, in chancery presiding:

I, John W. Webster, one of the examiners in chancery of the said circuit court, duly appointed to take the testimony in this cause by verbal stipulation of counsel under the 67th rule of the Supreme Court of the United States and amendments thereto, do most respectfully certify and report unto your honor that A. A. Higginbotham and Edward F. Bishop, witnesses on behalf of complainant,
86 were examined before me, who, previous to their respective examinations, were by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between Lucien Baker, complainant, and E. M. Hulburd, Daniel E. Parks, N. P. Seeley, and Samuel N. Wood, defendants, in a certain suit or matter now pending and undetermined in said circuit court upon the pleadings filed therein.

That the testimony of said witnesses was taken and reduced to writing before me, and after the same had been so taken the testimony of said witnesses was read over to them respectively by me in their presence and in the presence of counsel or of such of them as were in attendance before me, and thereupon the same was subscribed and sworn to by said witnesses respectfully, the oaths being administered by me, at my office in the city of Denver, in said district of Colorado.

I do further certify and report that the complainant produced in evidence Exhibits "A," "B," "C," "D," "E," "F," and "G"—in all, seven exhibits—which are hereto attached and made a part of the testimony in this cause, and that I have folioed said testimony, in red-ink figures upon the left-hand margin thereof, from folio 1 to folio 157 for convenient reference, and that the taking of testimony was continued from day to day until completed, as herein set forth, by agreement of counsel.

And I further certify and report that I am not an attorney, solicitor, or of counsel for either of the parties or otherwise interested in the event of this suit.

All of which is respectfully submitted.

JOHN W. WEBSTER, *Examiner.*

Dated Oct. 6th, 1887.

87 *Examiner's Fees.*

2 days' attendance taking testimony at $3.00	$6 00
157 folios at .20	31 40
Administering 2 oaths at .10	20

Marking, filing, & attaching 7 exhibits at .10	70
One copy of testimony for the complainant by request—157 folios at .10	15 70
Total examiner's fees	$54 00

Received payment of Lucien Baker, per A. A. Higginbotham, agent.

JOHN W. WEBSTER, *Examiner.*

Denver, Oct. 4th, 1887.

EXHIBIT A. John W. Webster, Examiner.

Whereas Lucien Baker has this 25th day of May, 1886, executed and acknowledged and delivered to me an assignment of his judgment against Lake county board of county commissioners, Colorado, gen. No. 1279, which said judgment was rendered and recovered against the said board of county commissioners of county of Lake, in the State of Colorado, in the circuit court of the United States for the district of Colorado, on the 12 day of November, 1883, for $16,054.00 *dollars;* and

Whereas such assignment is so made to me for convenience in the collection of the same; and

Whereas said Lucien Baker still retains as heretofore the ownership and control of said judgment:

Now, therefore, in consideration of the premises, I do hereby acknowledge the receipt of such assignment as aforesaid this 28 day of May, 1886.

E. M. HULBURD.

EXHIBIT B. John W. Webster, Examiner.

The Markham. B. M. Slack, manager. Cor. 17th and Lawrence streets. Welch & Slack, proprietors.

DENVER, COL., *June* 3, 1886.

88 D. E. Parks, Esq.

DEAR SIR: Will you please hand the assignment I sent you to Mr. T. H. Baker at my office?

Yours, &c., E. M. HULBURD.

EXHIBIT C. John W. Webster, Examiner.

LEADVILLE, COLO., *June* 6, 1886.

A. A. Higinbotham, Esq.

DEAR SIR: Got home all right this morning; went down to see Parks; found him sick in bed. Said he sent the assignment to me, addressed to Windsor, as I had written him on one of their letter-heads. Said he would telegraph for it if I said so, but I told him it was not necessary. He said that he was not yet through with it,

and that I should file it with the clerk of the U. S. court for reference, if necessary. I will write you again to-morrow.

Yours, &c., E. M. HULBURD.

E. M. Hulburd. Rec'd June 8, '86; ans'd June 9, '86.

EXHIBIT D. John W. Webster, Examiner.

Law office E. M. Hulburd, 514 Harrison avenue.

LEADVILLE, COLO., *June* 8, 1886.

A. A. Higinbotham, Esq.

DEAR SIR: I have been doing my best all day to get the warrant matter fixed up, but have not consum-ated it yet, but will, I feel sure, to-morrow. (I did not get that assignment back yet. Parks is coming down to-night. You can see him at Johnson's office.) I get three only of the warrants back, the $500 and two smaller ones; all the rest are sold. I wish you could come up here about next Monday. Wenzell is not at home, and I do not think he will be back before then. I think if you were here we might arrive at a settlement.

Yours, &c., E. M. HULBURD.

EXHIBIT E. John W. Webster, Examiner.

UNITED STATES OF AMERICA, *District of Colorado*, } ss:

In the Circuit Court of the United States.

89 LUCIEN BAKER
vs.
THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY.

For value received, I hereby sell, assign, and transfer to A. A. Higinbotham all my right, title, and interest in and to the judgment in this cause and all the interest of Lucian Baker assigned to me by him therein.

E. M. HULBURD.

STATE OF COLORADO, *Lake County*, } ss:

Be it remembered that on this day personally appeared before me E. M. Hulburd, personally known to me to be the same person who signed the above instrument of writing, and acknowledged that he signed the same as his free and voluntary act and deed for the purposes therein expressed.

[SEAL.] In witness whereof I have hereunto set my hand and affixed my notarial seal this 26th day of June, A. D. 1886.

T. H. BAKER,
Notary Public.

EXHIBIT F. John W. Webster, Examiner.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States for the District of Colorado.

LUCIEN BAKER
vs.
THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY.

For value received, I hereby sell, assign, and transfer to Lucien Baker all of my right, title, and interest of, in, and to the judgment in this court.

A. A. HIGINBOTHAM.

EXHIBIT G. John W. Webster, Examiner.

Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 21st
90 day of June, A. D. 1886, and in a certain cause in said court lately pending, wherein Lucien Baker was plaintiff and The Board of County Commissioners of Lake County, Colorado, was defendant, came D. E. Parks, Esq., an attorney of record in said court, and filed in said court and in said cause an assignment of judgment.

And the said assignment of judgment is in words and figures as follows, to wit:

Assignment of Judgment.

UNITED STATES OF AMERICA, *District of Colorado.* }

In the Circuit Court of the United States of the 8th Judicial Circuit, Held at Denver, within and for the District of Colorado.

LUCIAN BAKER, Pl'tff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, COLO., Def't. } Assignment of Judgment.

Judgment entered in said court in favor of plaintiff and against the defendant, November 12th, A. D. 1883, for—

Damages	$15,982 70
Costs	71 57
	$16,054 27

For value received I do hereby sell, assign, transfer, and set over unto S. N. Wood, of Denver, Colorado, all of the right, title, interest, claim, and demand which the plaintiff, Lucian Baker, or I have of, in, and to the said judgment above described, a transcript of which is hereto annexed, and authorize and empower him, the said assignee, to collect the same at his own proper costs and expense.

(S'g'd) E. M. HULBURD.

STATE OF COLORADO, } ss:
Lake County, }

Be it remembered that on the 17th day of June, A. D. 1886, personally appeared before me, the undersigned, a notary public within and for said county, E. M. Hulburd, personally known to me to be the identical person who signed the within and foregoing instrument of writing, and duly acknowledged that he signed and executed the same for the uses and purposes therein expressed.

In witness whereof I have hereinto set my hand and *and* affixed my notarial seal this 17th day of June, A. D. 1886.

(S'g'd) THOMAS M. O'BRIEN,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed:) 1279. Circuit court U. S. Lucian Baker *vs.* Lake County. Assignment of judgment. E. M. Hulburd & S. N. Wood. Filed Jun- 21, 1886. (S'g'd) Edward F. Bishop, clerk. D. E. Parks, att'y for def't.

91 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of an assignment of judgment heretofore filed in said court and in a certain cause lately in said court pending, wherein Lucian Baker was plaintiff and The Board of County Commissioners of Lake County, Colo., was defendant, as fully and completely as the same still remains on file in my office.

In testimony to the above I do hereunto sign my name and
[SEAL.] affix the seal of said court, at Denver, in said district, this — day of October, A. D. 1886.

EDWARD F. BISHOP, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

(Indorsed:) No. 2042. Lucien Baker *vs.* E. M. Hulburd, Daniel E. Parks, N. P. Seeley, & Samuel N. Wood. Testimony of complainant's witnesses taken before John W. Webster, examiner. Filed Oct. 6, 1887. William A. Willard, clerk.

And afterwards and on, to wit, the 14th day of March, A. D. 1888, came John W. Webster, Esq., an examiner in chancery of said court, and filed in said court and in said cause his report of the testimony taken before him on behalf of the complainant.

And the said report is in words and figures as follows, to wit:

Examiner's Report of Testimony — Behalf Complainant.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States for the District of Colorado.

LUCIEN BAKER *vs.* E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD. } In Chancery.

92 Testimony of witnesses taken before me, John W. Webster, one of the examiners in chancery of the circuit court of the United States for the district of Colorado, under the 67th rule of the Supreme Court of the United States and amendments, in accordance with the stipulation of counsel, in a case now pending and undetermined in said court between the parties aforesaid, on behalf of the complainant, at my office, in Denver, this Wednesday, the 29th day of February, A. D. 1888, at 10 o'clock a. m.

Present: Clinton Reed, Esq., solicitor for complainant, and Joel F. Vaile, solicitor for defendants.

And thereupon complainant introduced J. A. DE LAPP, a witness of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follow:

Q. Where do you reside?
A. In Denver, Colorado.
Q. Have you resideed in Leadville, Lake county, Colorado?
A. Yes, sir.
Q. Were you ever a member of the board of county commissioners of Lake county, Colorado?
A. Yes, sir.
Q. During what time?
A. I took my seat in 1883, I believe.
Q. And continued a member of the board till when?
A. I went out in January, 1887.
Q. During the time you were a member of that board did you know anything about the judgment Lucien Baker had against the county of Lake?
A. Yes, sir.
Q. Do you remember when that judgment was obtained?
A. I can't give the exact date.
Q. Was it while you were a member of the board?
A. Yes, sir.

93 Q. Did you know E. M. Hulburd there?
A. Yes, sir.
Q. Did you know him as the attorney for the plaintiff in this case?
A. Yes, sir.
Q. Did you know him as being the assignee of that judgment at any time, having the assignment of it?

Defendants objected as leading.

A. I did not understand it that way.
Q. How did you understand it?

Defendants objected to the statement of the understanding of the witness as being incompetent, irrelevant, and not binding on the parties defendant in this suit and because the question asks for an opinion and not the facts upon — the opinion is based.

A. While I did not know, I supposed——

Defendants objected to the supposition of the witness being stated in evidence, and object to any further answer of the question because the witness says he does not know.

A. I did not know positively whether he was the assignee of the judgment or not.
Q. Do you know John Alfred?
A. Yes, sir.
Q. What connection did he have, if any, with the board of county commissioners, or how was he employed by them, if he was employed?
A. We had him as a kind of a rounder, to hunt up floating property that was liable to get out of the county without paying taxes.
Q. Was he not the general agent of the commissioners in relation to taxes and county property?

Defendants objected as leading.

A. He was in that respect a kind of extra collector.
Q. Look at this paper, purporting to be a resolution of the board.
94 A. Yes, sir; I remember that resolution.
Q. You know about that levy?
A. I know about that levy, but I don't know whether it was for this judgment or not.
Q. What did you know, if anything, of Mr. Alfred's connection with the purchase of this judgment by S. N. Wood, from what Alfred told you or otherwise?

Defendants objected to the question because it is calling for hearsay testimony that is not binding on the defendants or either of them.

A. What I know about that is that after this transaction was entered into I asked Alfred one day what he paid for the judgment. Just the figures he gave I have forgotten, but I know I was surprised at the price paid and asked him how he came to get it so

cheap. He said he did not know any other reason than perhaps the fellow needed some money.

Q. Who did he refer to?

A. To Mr. Hulburd.

Defendants moved to strike out the answer to the last question both because it is hearsay and because it is a matter transpiring after the assignment of the judgment to the defendant S. N. Wood.

Q. Please state fully what Alfred said at that time concerning his knowledge—at the time of his purchase—of Hulburd's connection with the sale and why Hulburd, if anything was said, was willing to transfer it for that sum, and state the sum for which it was transferred, if he told you, as near as you can state it.

Defendants objected because it asks for hearsay testimony and relates to a conversation occurring subsequent to the transfer of the judgment to the defendant Wood.

A. I don't know that I could say anything further in re-
95 gard to that; anything further would be mere supposition. The price at which he bought the judgment was in the neighborhood of seventeen hundred dollars.

Q. State what he bought it for and who were interested in the purchase and who were to make a profit by the transaction.

Defendants objected as calling for the inference of the witness from the conversation and also for the reasons above stated.

A. I can't answer the question only as I state. I did not hear any of the details of the transaction at the time. I had asked the question simply out of curiosity, and if there was any further conversation in regard to what was done I have forgotten what the words were. The supposition from what I heard was——

Defendants objected to the witness' supposition that Hulburd wanted to do the old gentleman up.

Q. Who do you mean by the old gentleman?

A. The plaintiff's father-in-law, Mr. Higinbotham.

Q. Did he say anything in that conversation about Hulburd making a claim or excuse that they had not paid him what he ought to have for fees?

Defendants objected for the reasons above stated.

A. Those things were talked over in a general way.

Q. Could you not be a little more definite as to what was said about what was to be done or who was to receive the difference between the amount paid Hulburd and the amount that was to be paid by the county according to that resolution—the seventy-five cents on the dollar of the judgment?

A. I could not say as to that.

Q. What did Alfred say about that?

A. He did not say as to that.

96 Q. Do you know from any other source what was to be done with it?

A. Nothing, only what we guessed at.

Q. Do you know what N. P. Seeley had to do with the purchase?

A. No, sir.

Q. Do you know of his paying the money?

A. No, sir.

Q. In your discussions concerning the judgment or in the action of the board concerning the purchase of the judgment and the making of that levy or in your talk with Alfred was anything said about this amount that was to be paid or how it was to be divided?

A. No, sir.

Q. I suppose the question of purchasing this judgment at this price was talked about between yourselves—the members of the board?

A. Yes, sir; in session.

Q. You expressed your opinion concerning the purchase of this judgment through Hulburd, did you not?

A. Yes, sir.

Q. What did you say about it?

Defendants objected as incompetent, immaterial, and irrelevant and as calling for a matter of opinion.

A. At the time this judgment was obtained we had a large amount of litigation. In trying to settle up the judgments we considered we were a bankrupt county, making the best terms we could. Mr. Alfred made a proposition one time. He asked us if he could obtain this judgment so as to settle on the basis of seventy-five cents on the dollar if we would make the levy. After considering the matter, as we had made several other settlements on the same basis, we decided to do so, and told him if he could obtain the judgment we would make the levy of two mills each year till the judgment was paid.

Q. In that conversation with Alfred did he tell you what he was going to pay Hulburd or had paid Hulburd for the judgment?

97 A. No; not at that time.

Q. When did he?

A. It was after the contract was made and after the passage of that resolution—a week or ten days. I asked him, out of curiosity, what he paid for the judgment, and he told me. It was about seventeen hundred dollars.

Defendants objected to this testimony for the reasons already stated.

Q. At the time he told you he had purchased it at this price was that the time he told you how it was that Hulburd came to sell it for that price?

A. He told me the price at the same time he told me the other.

Q. Did Alfred know at that time that Hulburd was selling this judgment for just what he could get and was not selling it with the purpose of accounting to Lucien Baker or to anybody else for the judgment, from what he said?

Defendants objected because it is calling for the opinion of the

witness and not for what was said. The witness should be asked for the language used and not his opinion drawn from it.

A. That was what was said; that Hulburd wanted some money and wanted to get the most out of it he could and was selling to get the money.

Q. Was anything said by Hulburd?

A. He did not say that Hulburd said anything; it was only what he supposed; that he wanted to do the old gentleman up.

Q. Did Alfred say he knew that when he purchased?

A. No, sir; that was not the question. I asked the question in a casual way, and he answered it as I have stated.

98 Cross-examination:

Q. Where is Mr. Alfred now?

A. I suppose he is in Leadville. I saw him here about a week ago on a visit.

Q. What is his business now?

A. He is keeping a saloon.

Q. What is his first name?

A. John Alfred.

Redirect examination:

Q. Do you know whether he is still acting as the general agent of S. N. Wood there?

A. I do not know.

Recross-examination:

Q. You have no knowledge of his representing Mr. Wood as agent up there?

A. No, sir.

Redirect examination:

Q. You know that he acted as the agent of Mr. Wood in this purchase?

A. The records show that he was. He was there at the time the judgment was obtained.

Recross-examination:

Q. You have no knowledge of that except the statement of the record?

A. That is all. I never saw Mr. Wood up there.

Plaintiff then offered in evidence the paper marked "Exhibit A," hereto attached; to which defendants objected as follows: As being incompetent, irrelevant, and hearsay and relating to a matter transpiring subsequent to the assignment of the judgment to defendant Wood.

Plaintiff then offered in evidence the paper marked "Exhibit B," hereto attached; to which defendants objected as follows: As not

being the best evidence of that to which it relates and as being hearsay testimony, incompetent, and irrelevant.

J. A. DE LAPPE.

99 Subscribed and sworn to before me this 10th day March, A. D. 1888.

JOHN W. WEBSTER, *Examiner.*

Thereupon complainant produced FRANK C. YOUNG, a witness of lawful age, who, being first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. What is your firm?
A. The Rollins Investment Company, a corporation.
Q. Do you know S. N. Wood?
A. I do.
Q. Do you know N. P. Seeley?
A. I do.
Q. How long since this corporation was organized?
A. On the 31st day of December last—two months ago.
Q. What was the style of the firm before that?
A. Rollins & Young.
Q. Do you know of a purchase by N. P. Seeley and S. N. Wood of a judgment of Lucien Baker against the county of Lake?
A. I do.
Q. When did you first know of that? Did you know of it before the purchase?
A. If I did, it was not more than a day or two before.
Q. Do you know whether that was purchased by S. N. Wood; and, if so, how the money was paid and who paid it?
A. Not of my own knowledge.
Q. Do you know from what Seeley told you?

Defendants objected to the question as calling for the inference of the witness from conversations and because it is not the best evidence.

Q. Well, I will change the question. State what, if anything, Mr. Seeley said to you about this purchase and the payment
100 of the money and whether Rollins & Young paid that money or any part of it either directly to Hulburd or through Wood or through Seeley.
A. I don't remember anything of what Mr. Seeley may have said. As to the payment of the money, my recollection is it was paid by Rollins & Young through Mr. Seeley, so far as their interest in the purchase was concerned.
Q. What interest had Rollins & Young in the transaction?
A. My recollection is a half interest.
Q. Who owned the other half?
A. S. N. Wood, I believe.

Cross-examination:

Q. What was the relation of N. P. Seeley to the firm of Rollins & Young at the time of the purchase of the judgment mentioned?

A. He had a contingent interest in the concern.

Q. Was not the money that was paid for that judgment paid by S. N. Wood through Mr. Seeley?

A. That is my impression, but in answering the question before I understood it was stated somewhat differently. It was paid, as I remember it, through Mr. Seeley on account of Mr. Wood, and whatever interest Rollins & Young had in it was afterwards secured.

Q. The interest of Rollins & Young was the interest of Seeley, was it not?

A. Yes, sir.

Q. At the time of the purchase is it not true that Seeley and Wood were the parties interested in the purchase?

A. Yes, sir.

Q. Do you know how long afterwards Rollins & Young became the successors to the interest of Seeley?

A. I presume it was shortly after; in a few days, I think.

Q. Do you know of your own knowledge the amount that was paid for the judgment?

A. No, sir.

Q. Do you know from the statement of either Seeley or Wood?

A. I could not answer that now; I could ascertain by re-
101 freshing my memory from the offi*fe*.

Redirect examination:

Q. You say you think that the interest of Rollins & Young was acquired a few days after the assignment was made to S. N. Wood?

A. Yes, sir; a few days after the purchase was made by Wood; that is my impression.

Q. You mean by that, I suppose, that you paid the proportion of the purchase price that was coming from Rollins & Young and Seeley a few days subsequent?

A. Yes, sir.

Q. But the purchase was really made—that is, the money was paid through Wood on account of Wood and Seeley and Rollins & Young?

A. I don't say that. It seems to me that our interest was not provided for or secured at the same time. It seems to me that was an after consideration.

Q. The purchase, as I understand, was authorized by Seeley. He did not buy it for Wood and then buy an interest back, did he?

A. Yes, sir; I think he did. I think he at first acted solely for S. N. Wood.

Q. Do you know how the money was paid by Seeley, whether by his own check or by a draft on S. N. Wood or on Rollins & Young?

A. I do not.

FRANK C. YOUNG.

Subscribed and sworn to before me this 13th day of March, A. D. 1888.

JOHN W. WEBSTER, *Examiner.*

102 EXHIBIT A. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Lake, }

I, F. M. Reardon, county clerk within and for said county, in the State aforesaid, do hereby certify that the board of county commission-s of the county of Lake aforesaid made a levy of two (2) mills on the dollar on the assessed and taxable real and personal property in said county for the payment of the Lucien Baker judgment against said county; said levy made on October 22nd, A. D. 1886, and appears of record in the Commissioners' Record No. 5, on page 85.

Witness my hand and official seal this 7th day of October, A. D. 1887.

[SEAL.]

F. M. REARDON,
County Clerk,
By H. M. BURRELL, *Deputy.*

EXHIBIT B. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Lake, }

At a regular meeting of the board of county commissioners for Lake county, Colorado, held at the court-house, in the city of Leadville, on the 22 day of October, A. D. 1886, there were present J. A. De Lappe, chairman *pro tem.*; C. C. Kellogg, commissioner; J. Irwin, commissioner; Jno. W. Flintham, commissioner; D. E. Parks, county attorney; F. M. Reardon, clerk, by W. E. McNerney, deputy, when the following proceedings, among others, were had and done, to wit:

The following order was read and, on motion, adopted by the board:

Whereas S. N. Wood, assignee of the judgment against this county known as the Baker judgment, rendered in the circuit court of the United States for the district of Colorado, at Denver, Colorado, November 12th, A. D. 1883, by John Alfred, his agent, has proposed to this board that if the county of Lake shall and will pay said judgment by levying an annual tax of two mills on the dollar until said judgment is paid that he will and does, if said judgment is so paid, discount from the face of the same twenty-five per centum — the sum thereof as a consideration of such payment, and this board having fully considered and accepted said proposition on be-
103 half of said county in consideration thereof, it is ordered that for the year A. D. 1886 and for each and every year thereafter until the same is fully paid and satisfied there be levied and collected of and from the taxable property of the county of Lake, Colorado, two mills on the dollar of such property to pay,

satisfy, and discharge the said judgment known as the Lucien Baker judgment, now held and owned by said S. N. Wood, assignee, of Denver, Colorado, and the county treasurer of this county is hereby authorized to disburse and pay to said Wood or his order all money which may be collected and paid into the county treasurer from time to time on account of all levies made to pay said judgment, which under this order and arrangement is to be paid to the extent of seventy-five per cent. thereof.

STATE OF COLORADO, } ss:
County of Lake, }

I, F. M. Reardon, county clerk and *ex officio* clerk of the board of county commissioners in and for the county and State aforesaid, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the board of county commissioners for said Lake county now in my office.

In witness whereof I have hereunto set my hand and [SEAL.] affixed the seal of said county, at Leadville, this 7th day of October, A. D. 1887.

F. M. REARDON,
County Clerk.

(Indorsed:) Certified copy of order. Proposition to settle Baker judg'm't made by the board of county commissioners of Lake county, Colorado, Oct. 22nd, 1887. Exhibit A, John W. Webster, examiner. Fees, $1.00.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

To the honorable the judge of the circuit court of the United States for the district of Colorado, in chancery presiding:

I, John W. Webster, one of the examiners in chancery of said court, duly appointed to take the testimony in this cause by stipulation of counsel and in accordance with the 67th rule of the Supreme Court of the United States and amendments thereto, do most respectfully certify and report unto your honor that J. A. De Lappe and Frank C. Young, witnesses on behalf of complainant, were duly examined before me, who, previous to the commencement of their examinations in this cause, were by me first duly cautioned and sworn upon their respective oaths to testify the truth, the
104 whole truth, and nothing but the truth in relation to the matters in controversy between the parties to this action upon the pleadings filed therein.

That the testimony of the said witnesses was taken and reduced to writing before me, and after the same had been so taken and reduced to writing the testimony of said witnesses was read over to them respectively by me in their presence and in the presence of the counsel and such parties as were in attendance before me, and thereupon the same *were* subscribed and sworn to by said witnesses respectively, the oaths being administered by me, at my

office, in Denver, county of Arapahoe and State of Colorado, on the dates set forth in the jurats appended to the foot of the testimony of each witness.

I do further certify and report that the complainant introduced in evidence Exhibits "A" & "B," which are hereto attached and made a portion of the testimony in this cause, and that I have folioed said testimony in red-ink figures upon the left-hand margin thereof from folio 1 to 29, inclusive, the same being all the testimony taken at this time.

And I further certify and report that I am not an attorney, solicitor, or of counsel for either of the parties or otherwise interested in the event of this suit.

All of which is respectfully submitted.

JOHN W. WEBSTER, *Examiner.*

Denver, March 14th, 1888.

105 *Examiner's Fees.*

1 day's attendance	$3 00
29 folios testimony, at 20	5 80
Marking & filing 2 exhibits, at 10	20
Administering 2 oaths, at 10	20
Total due	$9 20

Received pay't of Mr. Higgenbotham for Lucien Baker.

JOHN W. WEBSTER, *Examiner.*

Denver, March 14th, 1888.

(Indorsed:) No. 2042. Lucien Baker *vs.* E. M. Hulburd, Daniel E. Parks, N. P. Seeley & Samuel N. Wood. Testimony of witnesses for complainant taken by John W. Webster, examiner. Filed Mar. 14, 1888. William A. Willard, clerk.

And afterwards and on, to wit, the 19th day of September, A. D. 1888, at chambers, before the Honorable Moses Hallett, district judge, the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Leave to File Supplemental Bill.

LUCIEN BAKER
vs.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELY, and SAMUEL N. WOOD. } 2042. In Chancery.

Bill to cancel an assignment of judgment, for an injunction, and for other relief.

And now comes the complainant in vacation and presents his petition for leave to file his supplemental bill in said cause, and, it appearing that the solicitors for defendants H. P. Seeley, Samuel N.

Wood, and Daniel E. Parks have been duly notified of said application, the same is allowed and the complainant has leave to file his supplemental bill.

106 And afterwards and on, to wit, the 19th day of September, A. D. 1888, came again the said complainant, by his solicitor aforesaid, and filed in said court and in said cause his supplemental bill of complaint against the said defendants.

And the said supplemental bill is in words and figures as follows, to wit:

Supplemental Bill.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the United States Circuit Court within and for said District.

LUCIEN BAKER, Plaintiff,
vs.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD, Defendants.

To the above-named defendants and Messrs. Wolcott & Vaile, their solicitors:

Take notice that I will on the next rule day of said court apply to the Honorable Moses Hallett, judge of said court, for leave to file a supplemental bill in the above-entitled cause, a copy of which is herewith attached and served.

Dated Leadville, Colo., August 16th, 1888.

CLINTON REED,
Solicitor for Complainant.

Service of above notices and copy of supplemental bill acknowledged for hearing this 18th day of September, 1888.

WOLCOTT & VAILE,
Att'ys for Def't- Seeley and Wood; also for D. E. Parks.

107 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the United States Circuit Court within and for said District.

LUCIEN BAKER, Plaintiff,
vs.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD, Defendants.

To the judges of the circuit court of the United States for the district of Colorado:

Lucien Baker, of Leavenworth, in the State of Kansas, and a citizen of the State of Kansas, brings his supplemental bill against E. M. Hulburd, Daniel E. Parks, N. P. Seeley, and Samuel N. Wood, citizens of the State of Colorado.

And thereupon your orator complains and says that he filed his original bill against said defendants in this court ——, 1887, wherein he prayed that the assignment of a certain judgment in favor of your orator and against Lake county, Colorado, by E. M. Hulburd to the defendant Samuel N. Wood be cancelled and held to be void and of no effect for the reason that the same was fraudulent and void.

And your orator further shows that the said Parks, Seeley, and Wood, being duly served with the process of subpœna, appeared to your orator's said bill and put in their answers thereto, claiming to be innocent purchasers, in good faith, of said judgment.

That thereupon testimony was taken in said case on behalf of your orator, and one witness was examined on behalf of the
108 defendants, by stipulation of counsel, before the testimony of complainant was closed.

And your orator further shows that since the commencement of this suit and the filing of said original bill the treasurer of said Lake county, Colorado, has, at various times hitherto, paid to the said defendant, Samuel N. Wood, for the use of said Wood and the defendant N. P. Seeley and upon said judgment, about fifty (50) per cent. of the said judgment, pursuant to an agreement between the said county and said Wood that he, the said Wood, would satisfy said judgment upon the payment by said county to him of seventy-five (75) per cent. of the amount thereof; that said portion of said judgment has been paid by said county to said Wood in installments; that the last installment was paid on the 14th day of July, 1888.

And your orator further shows that said S. N. Wood has no right to hold and keep said money so collected on said judgment, but that the same is the property of and belongs to your orator.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief herein and in his original bill prayed, and may, upon their oaths, answer the premises as fully as if the same were here again repeated.

And that your orator may have the same relief against the said S. N. Wood and the other defendants as if the facts hereinbefore stated and charged by way of supplemental had been stated in your orator's said original bill, and that the said S. N. Wood may be required to account to your orator for the money so received by him from said treasurer of Lake county, Colorado, upon and in payment of said judgment, and may be required by the decree of this honorable court upon the final hearing of this cause to pay over to your orator the money theretofore received by him from said
109 Lake county in payment or part payment of said judgment.

And that your orator may have such other and further relief as to your honors shall be deemed just and equitable in the premises.

CLINTON REED,
Solicitor for Complainant.

STATE OF COLORADO, } ss:
County of Lake, }

A. A. Higginbotham, being first duly sworn, on his oath deposes and says that he is the general agent and business manager of the complainant, Lucien Baker, in the State of Colorado; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge except those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. Affiant further says that he makes this verification for and on behalf of the said Lucien Baker for the reason that he is familiar with the facts therein stated, and the said Lucien Baker is absent from the State of Colorado and unable to make this verification.

A. A. HIGINBOTHAM.

Subscribed & sworn to before me this 28th day of August, 1888.
[SEAL.] WM. ELIOT HUGO,
Notary Public.

(Indorsed:) 2042. United States circuit court, district of Colorado. Lucien Baker *vs.* E. M. Hulburd *et al.* Supplemental bill and notice. Filed Sep. 19, 1888. William A. Willard, clerk.

110 And afterwards and on, to wit, the 22nd day of September, A. D. 1888, came Robert H. Buck, Esq., an examiner in chancery of said court, and filed in said court and in said cause his report of the testimony taken before him on behalf of the complainant.

And the said report is in words and figures as follows, to wit:

Examiner's Report of Testimony — Behalf Complainant.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States within and for said District.

LUCIEN BAKER
vs.
SAMUEL N. WOOD, E. M. HULBURD, and Others. } Equity.

The deposition- of sundry witnesses produced, duly cautioned, sworn, and examined upon their several and respective oaths at the office of Clinton Reed, Esq., in the city of Leadville, in said district of Colorado, beginning on Thursday, the 28th day of June, A. D. 1888, by and before me, Robert H. Buck, a duly qualified and appointed examiner in chancery of said court.

On this 28th day of June, A. D. 1888, beginning at ten o'clock in the forenoon—present, Clinton Reed, Esq., for complainant, and D. V. Burns, Esq., for defendants Wood and Seely—

THOMAS H. BAKER, a witness on the part of complainant, being produced, sworn, and duly cautioned, testified as follows:

Direct examination by Mr. REED:

Q. Mr. Baker, did you know Mr. Daniel E. Parks and Mr. Higginbotham along in the spring of 1886?

A. I did.

111 Q. Were you at that time in any way connected with Mr. Higginbotham as agent?

A. I was the agent for Lucien Baker at this point, Mr. Higginbotham being the general agent for the State for the same party.

Q. You were agent through the employment of Mr. Higginbotham?

A. Yes, sir; to act for him.

Q. Did you, under direction from Mr. Higginbotham, go to Mr. Parks concerning the assignment of the Baker judgment by Hulburd?

A. I did.

Q. State what transpired.

A. I received an order from Mr. Higginbotham to obtain the assignment from Mr. Parks. It was on or about the 3d of June, 1886. I went first to his office and found that he was not there—about between nine and ten o'clock in the morning—and then I went to his residence. His wife appeared at the door and said that he was sick, but that he would likely be up during the forenoon—would be up if he was able to, to his office—so I did not make known my errand at the time. I waited until about twelve o'clock and found that he had not put in an appearance at his office nor at the court-house, and so I went to his residence again and delivered the order to his wife, who delivered it to Mr. Parks. I did not see Mr. Parks then, but he reported, through his wife, that he would be at his office soon; that he would meet me there. About one or two o'clock of the same day I met Mr. Parks in front of the court-house, and he said——

Q. Well, what did you say to him?

A. I said to him, "Well, what about this matter—this order for the assignment?"

Q. For what assignment?

A. The assignment of a judgment of Lucien Baker against the county of Lake.

Q. Well?

A. He said he had already sent the assignment to the direction of E. M. Hulburd, in the care of the Windsor hotel, in

112 Denver. That is pretty much all there was of our intercourse.

Q. What did he say about receiving the order—this order that you had left with his wife?

A. I don't know as he said anything specially, only he understood it at once that was what it was, and he sent it on, this order he received from me. He said, "I have already sent it"—sent the assignment to Mr. Hulburd, in Denver, care of the Windsor hotel. He said, I can't deliver that.

Q. Whose order was that? To whom did he send it?
A. He sent it to E. M. Hulburd.
Q. Sent it to E. M. Hulburd?
A. Yes, sir.
Q. Did you have any conversation with him about the judgment or the assignment of it or the transfer of the assignment or about Higginbotham's connection with it any more than what you have stated?
A. Not then.
Q. At any time?
A. Yes, sir; after Mr. Hulburd had left the place for parts unknown I met Mr. Parks at the post office one day, and I says to him—after knowing all the circumstances and being connected with them I said, "I rather doubt whether Hulburd ever received twenty-five hundred dollars from Mr. Wood, the cashier of the national bank in Denver." He said, "Yes; he did. I was present at the time the transaction was made and saw him pay the money." That was about the end of our conversation.
Q. You know the financial standing of Mr. Hulburd, whether he was a man of means or a poor man, and his credit and reputation in the community financially?

Objected to by counsel for Wood and Seely as incompetent and irrelevant.

Q. Answer first if you know.
A. I think I do know. I was with him nearly two years; officed with him in the same office.
Q. State what it was and whether he had any money or any credit in the community.

113 Objected to by counsel for Wood and Seeley.

A. I knew that he had neither money nor credit.
Q. Have you any interest in this proceeding or are you in any way connected with Lucien Baker except as you have been employed by Mr. Higginbotham?
A. No, sir.
Q. Are you any relative of his?
A. No, sir; not at all.

THOMAS H. BAKER.

Cross-examination waived.

Subscribed and sworn to before me this 13th day of September, A. D. 1888.

ROBERT H. BUCK,
Examiner in Chancery.

CHARLES C. KELLOGG, a witness produced on part of complainant, being duly sworn and cautioned, testified as follows:

Direct examination by Mr. REED:

Q. Were you a member of the board of county commissioners in 1886?

A. Yes, sir.

Q. Did you know anything about the existence of the Lucien Baker judgment against the board of commissioners?

A. Yes, sir; against the county of Lake.

Q. Against the county of Lake?

A. Yes, sir.

Q. Do you remember of some warrants being issued in part payment of that judgment?

A. Yes, sir.

Q. At whose instance were they issued?

A. Mr. Hulburd came before the board claiming to be the attorney for Mr. Baker, and that he had full power to act and wanted to get something to apply on his fees; that was the first talk that was had.

Q. What did he say as to who owned the judgment, if anything?

Defendants Wood and Seely, by their counsel, object to the question for the reason that defendant Hulburd has not been
114 served with process, and therefore his declarations are not admissible.

Q. Go on, Mr. Kellogg.

A. Well, he claimed that the judgment was Mr. Baker's and that he was his attorney and had full power to collect any part of it.

Q. What did you do upon his making that representation?

A. I think that the board left the matter to Mr. Parks for inquiry if it was all right to issue anything to Mr. Hulburd.

Q. Was Parks present at the time Hulburd made this claim?

A. I forget whether he was present at that time or not. Subsequently, or very soon after, he stated to the board that Mr.——

(By Mr. BURNS:)

Q. Who was with Hulburd?

Objected to by Mr. Reed.

A. He stated that Mr. Hulburd had power to act in this matter and it would be proper to issue warrants.

Q. You don't remember the date of that?

A. I don't very well. I could remember it from the records.

CHARLES C. KELLOGG.

Cross-examination waived.

Subscribed and sworn to before me this 13th day of September, A. D. 1888.

ROBERT H. BUCK,
Examiner in Chancery.

FRANK M. REARDON, a witness on the part of the complainant, being produced, duly sworn, and cautioned, testified as follows:

Direct examination by Mr. REED:

Q. Mr. Reardon, what office, if any, did you hold in Lake county in the year 1886?

A. Office of county clerk.

Q. For what length of time did you hold it?

A. From the 8th day of January, 1884, until, I think it
115 was, the 10th day of January, 1888.

Q. Do you know or did you at the time know anything about a judgment against the county of Lake and in favor of Lucien Baker?

A. There was such a judgment. I don't know the amount.

Q. Do you know of any connection that E. M. Hulburd had with it?

A. Why, E. M. Hulburd had a power of attorney on record from—I think it was Higginbotham & Barnes.

Q. From Higginbotham & Barnes or from Baker & Barnes?

Objected to because the record is the best evidence.

A. It was from somebody that had a judgment there; that was the way of it.

Q. What did Hulburd do about it and what connection had Parks with it?

A. Mr. Parks?

Q. Yes, sir.

A. He was county attorney.

Q. Did you ever have any conversation with Parks about the authority or right of Hulburd to——

A. There was some talk about having the judgment transferred and Mr. Parks came up into the office and wanted us to look up the authority for this man Hulburd to transfer it, and I hunted it up and found it for him and found the power of attorney for him. I told him in the course of the conversation that I didn't think it was hardly a square deal, knowing the man's reputation, to transfer them, and I would advise him, on behalf of the county, to be a little cautious; and Parks said he didn't care about that as long as the power of attorney was there giving authority to transfer it.

Q. Did you know afterwards of its being transferred?

A. I think it was transferred; yes, sir. A levy was made for its payment.

Q. You know there was a levy made to pay it?

A. Yes, sir.

Q. Do you know, either from conversation with the board
116 of commissioners or from being personally present, of their being notified about the 1st of October, 1886, that this transfer wasn't valid nor binding?

Objected to by defendants Wood and Seely as incompetent and irrelevant and as in no way affecting their rights.

A. I knew from my deputy that there had been a notification served on the board. I wasn't attending the board of commissioners as their clerk. My deputy, Mr. McNerney, was there, and he came up and told me that there had been a notification served——

(Objected to by defendants Wood and Seely as being hearsay.)

—and Mr. Reed came up into the office while the taxes were being computed and went over the records with me—the commissioners' records. The book, I think, was turned in about January for the collection of taxes.

Q. January, 1887?

A. Yes, sir.

Q. What did I say to you about the validity of this transfer?

Objected to by defendants Wood and Seely as incompetent and irrelevant.

A. Mr. Reed said that it was invalid and I told him he had better put a mandamus on the board or on the treasurer before the taxes were collected and disbursed in payment of it. That was on a Monday afternoon. I believe I said a mandamus—I meant an injunction. Mr. Reed told me he thought a mere notification to the commissioners would do, and he asked me when the commissioners met and I told him that night. That's how I know it was Monday. And afterwards my deputy came up and told me that a notification had been served.

Q. About what time was that, as near as you can remember?

A. My impression is that it was some time—I can't state
117 positively—some time between August and December. I know that the tax book was being made up. I think it was after August and before December. The tax book was being made up, and that is the reason I believe it was that time.

FRANK M. REARDON.

Cross-examination waived.

Subscribed and sworn to before me this 13th day of September, A. D. 1888.

ROBERT H. BUCK,
Examiner in Chancery.

WILLIAM E. MCNERNEY, a witness on the part of complainant, being produced, duly sworn, and cautioned, testified a- follows:

Direct examination by Mr. REED:

Q. Mr. McNerney, please state what connection you had with the office of clerk and recorder of Lake county in the summer and fall of 1886.

A. Deputy clerk.

Q. Do you remember being present at a meeting of the board of county commissioners along about the 1st of October, at which time I appeared there and gave notice concerning the assignment of the Baker judgment?

A. I do.

Q. You may state what was said.

Defendants Wood and Seely object as being incompetent and irrelevant and as in no way affecting their rights.

A. When you appeared there it was after the levy was made to

pay the judgment. I don't know whether it was a week or two or three, but it was some time after the levy was made, and you objected to the levy being made and said that Hulburd had no right to make the assignment. That was the amount of it.

Q. The substance of it?

A. Yes, sir.

Q. Do you remember whether that was a session of the board?

A. Yes, sir.

118 Cross-examination by Mr. BURNS:

Q. Was there any action taken by the board that you know?

A. There was no action taken. They said that the levy had been made, and that was all they knew about it.

Q. Made previous to that time?

A. Previous.

Q. Had the judgment been paid?

A. No, sir; it had been paid before that by warrants and the warrants were cancelled.

WILLIAM E. McNERNEY.

Subscribed and sworn to before me this 13th day of September, A. D. 1888.

ROBERT H. BUCK,
Examiner in Chancery.

I, Robert H. Buck, an examiner in chancery of the circuit court of the United States within and for the district of Colorado, do hereby certify that before the taking of the foregoing depositions of Thomas H. Baker, Charles C. Kellogg, Frank M. Reardon, and William E. McNerney they, the said witnesses, were by me severally duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth; that the said depositions were taken by and before me, at the office of Clinton Read, Esquire, in Leadville, in said district, on the 28th day of June, A. D. 1888, beginning at ten o'clock in the forenoon and thence continuing until the same were completed; that said depositions were reduced to writing in my presence and after having been so reduced to writing were carefully read over by the said witnesses respectively and thereupon by them respectively subscribed and sworn to before me on the 13th day of September, A. D. 1888, at said Leadville; that during the whole time of the taking of said depositions I was attended by Clinton Read, Esquire, solicitor for said complainant, and by

119 David V. Burns, Esquire, solicitor for respondents Wood and Seeley.

I further certify that I am a duly appointed and qualified examiner in chancery of said court within and for said district, and that I am not solicitor or of counsel to either of the parties to said cause nor in any manner interested in the event of the same.

Witness my hand, at said Leadville, this thirteenth day of September, A. D. 1888.

ROBERT H. BUCK,
Examiner in Chancery.

Fees, $20.80, paid by complainant.

(Indorsed:) 2042. Lucien Baker *v.* S. N. Wood & *als.* Examiner's report. Filed Sep. 22, 1888. William A. Willard, clerk.

And afterwards and on, to wit, the 14th day of November, A. D. 1888, came again the said complainant, by Clinton Reed, Esq., his solicitor, and filed in said court and in said cause his præcipe for and sued out of and under the seal of said court an alias writ of subpœna against E. M. Hulburd.

And the said alias subpœna and marshal's return *is* in words and figures as follows, to wit:

Alias Subpœna and Return.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

120 The President of the United States of America to E. M. Hulburd, impleaded with Daniel E. Parks, N. P. Seely, and Samuel N. Wood, Greeting:

You are hereby commanded that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in January next (it being the 7th day of January, A. D. 1889), to answer the bill of complaint of Lucien Baker filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the [SEAL.] seal of the said circuit court, at the city of Denver aforesaid, this 14th day of November, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the 113th year.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Memorandum.

The above-named defendant is hereby notified that unless he shall enter his appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be 121 taken against him as confessed and a decree entered accordingly.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Marshal's Return.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

DENVER, *Jan. 21st*, 1889.

Went on Dec. 10th to serve the defendant E. M. Hulburd at or near the Valley or Thompson mines, and that upon reaching said mines a party ran away; said party was *atwards* represented to me as said E. M. Hulburd, as by affidavits hereto attached; said mines are situated in Las Animas Co., Colo.

This writ therefore returned, executed as the law directs, this 21st Jan., A. D. 1889.

ZEPH. T. HILL, *Marshal,*
By W. R. WALKER,
Deputy Marshal.

Marshal's fees:

Service, 1 persons, at $2.00 *each*	$2 00
Total	$2 00

STATE OF COLORADO:

In the United States Court, District of Colorado, in the 8th Circuit *Court.*

LUCIEN BAKER
vs.
SAM. N. WOOD, H. P. SEELEY, E. HULBURD, DANIEL E. PARKS. }

John Vickers, being first duly sworn according to law, deposes and says: I am of lawful age and reside near the Valley mines or Thompson mine, in the county of Las Animas, State of Colorado; that on or about the 10th day of December, A. D. 1888, W. R. Walker, a deputy U. S. marshal of Colorado, and A. A. Higginbotham, of Denver, Colorado, visited these mines above named, as Mr. Walker said, to serve a subpœna, and showed me a U. S. subpœna for E. M. Hulburd, who was then going under the name of E. M. Howell and working at the shute. When Walker and
122 Higginbotham approached where Hulburd or Howell was he secreted himself, as I verily believe, and therefore service could not be had on him. Mr. Walker and Higginbotham staid there quite awhile, endeavoring to get service, but, he not showing himself, they eventually went to Trinidad, and afterwards he left for parts unknown.

(Witness here handed a photograph of Hulburd or Howell and says he verily believes it to be a likeness of the man herein mentioned, marked Exhibit A and made part of this affidavit.)

JOHN VICKERS.

STATE OF COLORADO, }
Las Animas County, } *ss:*

Subscribed and sworn to before me this 22nd day of January, A. D. 1889.

[SEAL.] WILLIAM R. WALKER,
Notary Public.

My commission expires May 19th, 1891.

NOTE BY CLERK.—Photograph attached to original not copied here.

LUCIAN BAKER
vs.
SAM. N. WOOD, N. P. SEELEY, E. M. HULBURD, DANIEL E. PARKS.

In the United States Court, District of Colorado, in the 8th Circuit.

William R. Walker, being first duly sworn, deposes and says that he resides at Trinidad, county of Las Animas, State of Colorado; he is a deputy United States marshal for the district of Colorado, duly commissioned; that on the 10th day of December, A. D. 1888, I was called upon by *by* A. A. Higginbotham, of Denver, Colorado, to serve a subpœna issued out of the United States district court of Colorado, at Denver, Colorado, directed to the U. S. marshal for service; that in company with said A. A. Higginbotham I did proceed to the Valley mines in said county to serve the same on one E. M. Hulburd; that when I approached said mine a man who said Higginbotham represented — me to be said E. M. Hulburd did run away and secrete himself whilest I was there and prevented me from getting service in said subpœna on him as I was commanded by law to do; that after remaining at said mines for quite awhile and using due diligence to get service in said subpœna I returned to Trinidad, Colorado; that whilst there I was informed that said Hulburd was employed in said mine as under the name of E. M. Howel; that I now am informed that said Hulburd left the country and has not since been heard from in this section.

WILLIAM R. WALKER,
Deputy United States Marshal.

STATE OF COLORADO, }
County of Las Animas, } *ss:*

I hereby certify that the above and foregoing affidavit was subscribed and sworn to before me this 22d day of January, A. D. 1889.

[SEAL.] W. W. DUNBAR,
Notary Public.

My commission expires Nov. 20th, 1891.

123 In U. S. Court, District of *Columbia*, in the 8th Circuit.

LUCIEN BAKER
vs.
SAM'L N. WOOD, N. P. SEELEY, E. M. HULBURD & DAN'L E. PARKS.

Christopher St. George being first duly sworn, upon his oath says:

My name is Christopher St. George; age, 50 years; residence, No. 1338 California street, Denver, Colorado; occupation, dealer in books and fine art.

Some time last April, in the city of Pueblo, Colorado, and in a room on Union avenue, in said city, I met with E. M. Hulburd, formerly an attorney in Leadville, Colo. I had known him intimately in Leadville, and addressed him as Hulburd. "Hush," says he, "Don't call me Hulburd, I am going by the name of E. M. Howell; Hulburd has sunk out of existence; you are the first man who has recognized me since leaving Leadville. I have worked over a year and a half in the Pueblo smelting and refining works. I don't want any man to know me, for as I did not do what was right in Leadville it might lead to my arrest."

I met him several times afterwards. Once he came to my room, and we had a long talk over Leadville affairs, etc. I have not met him since April, 1888.

I went to the Pueblo smelting works with A. A. Higinbotham last November to find him, but learned from the foreman, J. C. Hanna, after getting there, that Hulburd left in April. I afterwards learned that he had gone to Trinidad and was working in a coal mine not far from that place. I never met him afterwards.

C. ST. GEORGE.

STATE OF COLORADO,
County of Arapahoe, } *ss*:

Subscribed and sworn to before me this 21st day of January, A. D. 1889.

[SEAL.] DE WITT AKIN,
Notary Public.

My commission expires July 28, 1890.

(Indorsed:) Gen. No. 2042. Circuit court of the United States for the district of Colorado. In chancery. Lucien Baker *vs.* E. M. Hulburd *et al.* Alias subpœna for Hulburd. Returnable to rule day, first Monday in January, A. D. 1889. William A. Willard, clerk. Filed this 23d day of Jan'y, A. D. 1889. William A. Willard, clerk, by F. W. Tupper, deputy clerk. Clinton Reed, of Leadville, compl't's sol'r.

And afterwards and on, to wit, the 9th day of December, A. D. 1889, there was opened, published, and filed in said court and
124 in said cause the deposition of E. M. Hulburd on behalf of complainant.

And the said deposition is in words and figures as follows, to wit:

Deposition E. M. Hulburd — Behalf Complainant.

UNITED STATES OF AMERICA, }
District of Colorado. }

In the Circuit Court in and for the District of Colorado.

LUCIEN BAKER, Plaintiff, }
vs. }
E. M. HULBURD, SAMUEL N. WOOD, N. P. SEELEY, and DANIEL E. PARKES, Defendants. }

Deposition of E. M. Hulburd, to be used in the above-entitled cause, taken before Edwin B. Seward, a notary public within and for the county of Santa Fé and Territory of New Mexico, in accordance with the attached stipulation made in this cause on the 25th day of July, A. D. 1889, by the attorneys for the said plaintiff and the said defendants respectively, said testimony being so taken as aforesaid at the office of said notary public, in the town and county of Santa Fé, Territory of New Mexico, on the 30th day of July, A. D. 1889, commencing at the hour of 12 o'clock of said day.

Present as aforesaid: Charles H. Robinson, Esq., attorney for defendant Wood and others, and E. A. Fiske, Esq., attorney for plaintiff, and E. M. Hulburt, defendant and witness.

E. M. HULBURT, being called by plaintiff and duly sworn according to law as a witness for plaintiff in this case, testifies as follows:

(Questioned by E. A. FISKE:)

Q. What is your name, age, occupation, and place of residence?

125 A. My name is E. M. Hulburt. I am thirty-seven years of age; occupation at present, mining; residence, Gallup, New Mexico.

Q. Do you know the parties to this suit; and, if yea, how long have you known them respectively?

A. I have known plaintiff, Lucien Baker, about six years, but have seen him but few times during that time. I have known the defendants Daniel E. Parkes and N. P. Seeley about eight years. I am not acquainted with the defendant Wood. The other defendant is myself.

Q. Are you acquainted with the subject-matter of this suit?

A. I have read the complaint and know the facts and circumstances connected with the transaction or did know them at that time—I mean the subject-matter of this suit.

Q. Were you at any time attorney for the plaintiff in this cause in another suit in Colorado, in which the plaintiff in that suit obtained a judgment against Lake county? And, if so, state in what court such judgment was obtained, who were the parties to that suit,

against whom the judgment was rendered and in whose favor, and about the time of the rendition of said judgment.

(Objected to as incompetent. The record will be the best evidence.)

A. I was the attorney for Lucien Baker, the plaintiff, in an action in the circuit court of the United States at Denver, Colorado, in which Baker was plaintiff and The Board of County Commissioners of Lake County defendants. The date of the rendition of the judgment in that court I cannot recollect. The judgment was in favor of the plaintiff, Baker, and against Lake county, and I think was rendered in 1883; anyway, it was the only judgment procured by me for Baker against the county of Lake.

126 Q. Please state, if you know, what further connection you had, if any, with this judgment. Give a history of all the facts relating to your connection with the judgment after it was recovered, if you had anything to do with it after it- recovery.

A. After the rendition of the judgment, pursuant to the statute of Colorado, I made application before the board of commissioners of Lake county, Colorado, to levy a special tax to pay the same as required by law. My petition was refused, and thereupon I made application before Judge Halleck, of the circuit court (U. S.) of Colorado, for an alternative writ of mandamus. The writ was granted and the cause came on for hearing on the answer of the commissioners to the alternative writ, and at the hearing the *pre*emptory writ wa s denied for the reason that the commissioners had already exceeded their power to tax for that fiscal year. About the time or soon after these proceedings last mentioned D. E. Parkes, one of the defendants in this cause and the attorney of record in said suit and the attorney for said Lake county in all the proceedings above referred to, and myself began negotiations between ourselves, the object and purpose of which was to make something for ourselves out of the judgment in that action. After several projects and schemes were considered and abandoned it was agreed between us that if I could get an assignment from the plaintiff in that action to me of the judgment against said Lake county that he, Parkes, would find a man that would pay me eight thousand dollars for it, the original judgment being in the neighborhood of sixteen thousand dollars. Pursuant to that agreement I went to Mr. Hignbothan, who was then the agent and attorney-in-fact of the said Lucien Baker at Denver, Colorado, the said Baker living at that time in Leavenworth, Kansas, and represented to him that I thought that I could get the board of county commissioners of Lake county to levy a tax to pay that

127 indebtedness provided an assignment of the judgment was made to me. I told him further that Mr. Parkes, if the judgment stood in my name, would give his support to that measure, but that there was such a prejudice and ill-feeling upon the part of the board of commissioners of Lake county against said Baker and against he, Higinbothan, that it would be useless to ask any accommodation for them. Mr. Higibothan agreed to pro-

cure the assignment for me, which he afterwards did. The representations thus made to Mr. Higibothan were considered and talked over between myself and Mr. Parkes prior to their having been made by me to Mr. Higinbothan. Between the time of our first agreement and the time of the receipt of the assignment by me of said judgment I had numerous conversations with Mr. Parkes, and the price that was to be paid to me was reduced from eight thousand dollars to five thousand dollars. Mr. Parkes claimed to me that Mr. Wood was advised by Mr. Seeley not to pay any greater sum than five thousand dollars. I assented to that. There was considerable bartering between us in reducing it from eight thousand dollars to five thousand dollars, and Parkes claimed to me that it was only through his influence and assurances made by him to Wood to the effect that he would use his influence in having the judgment paid that induced Wood to buy the judgment at any price. After I received the assignment I think I caused the same to be filed with the clerk of said U. S. circuit court, and afterwards executed to Samuel N. Wood an assignment of said judgment. The date of said last assignment, I think, was in July, 1886. The assignment was written by Daniel E. Parkes, and, I think, copied by me. After the assignment was executed I delivered it, at the request of Mr. Parkes, to the defendant N. P. Seeley at the Tabor Grand hotel, in Leadville, in the pres-
128 ence of Mr. Parkes, and received from Mr. Seeley at that time a check or certificate of deposit, I don't recollect now which, for the sum of twenty-five hundred dollars. I made no objection at that time or at any time after that to the amount paid me, but it was only half what Parkes and I had agreed upon that I should receive. I think I did nothing further, and probably could not have done anything further in relation to that judgment.

Q. Do you know anything further than you have stated concerning the knowledge of any of the defendants as to the action taken by you in the matter of that judgment or the assignment of it? If yea, state any further knowledge you may have on that subject.

A. All that I know is with reference to the defendants Parkes and Seeley. Parkes had full knowledged that the assignment was made to me without consideration and knew that I was acting clandestinely, illegally, and wilfully against the interests of my client, and knew that it was my intention to appropriate what money I received to my own use. So far as the defendant Wood is concerned, I don't think I ever saw him and am not acquainted with him and never was. I don't recollect of ever speaking to Mr. Seeley more than once in relation to the matter; that was shortly after his return from California and nothing was said in that conversation except with reference to the price that Mr. Woods was willing to pay for the judgment. I cannot recollect now what our conversation was with reference to the price, but I know that it was nothing except conversation on that subject. At the time of the delivery of the assignment we had no conversation; he simply walked into the hotel, I executed the assignment, delivered it to Mr. Seeley, and the only conversation there that I now recollect was Mr. Seeley

asked Mr. Parkes if it was all right, and upon his answering in the affirmative he handed me the check above referred to and
129 we separated. I believe that is all I recollect.

Q. State whether or not you paid any consideration to Mr. Baker or any agent of his for the assignment of that judgment from Baker to you.

(Objected to as immaterial, irrelevant, and incompetent, witness having already testified that he received twenty-five hundred dollars.)

A. I did not.

(Defendant- moves to strike out the answer on the ground that it is a mere legal conclusion.)

Q. At the time you received the twenty-five hundred dollars and while proceedings were going on between you and Mr. Parkes, as you have stated in your testimony, please state whether or not you were acting as agent or attorney in that matter for Mr. Lucien Baker.

(Objected to as incompetent, immaterial and irrelevant.)

A. I was the general attorney of Mr. Baker in that matter and in other suits and acted as his agent and attorney both in business matters of his at Leadville.

Q. Please state whether the representations you made to Mr. Higinbotham, as testified to by you, to induce the assignment of the judgment to you were or were not true as a matter of fact, so far as you then knew.

A. The representations with reference to the prejudice of the commissioners I believed to be true by reason of the fact that Mr. Higinbotham, who is the father-in-law of the plaintiff, and Mr. George M. Barnes, the partner of Mr. Higinbotham in business at Leadville as Higinbotham & Barnes, had had several matters of litigation and some trouble of business character with the board of county commissioners in reference to county warrants and county bonds, and I believe that there was such a feeling upon the part of some of the commissioners that would influence them unfavorable
130 towards Higinbotham & Barnes or towards their client or principal.

(Defendants move to strike out of said answer everything in relation to the feeling of the county commissioners of Lake county against the firm of Higinbotham & Barnes as immaterial and irrelevant.)

Q. You state in your testimony that the assignment by you to Wood was in July. Are you certain of that date?

A. I am not absolutely certain; it was some time about July.

Q. When you refer in your testimony to Wood, Seeley, and Parkes, state whether or not you mean the defendants in this case.

A. I do.

Q. State, if you know, why you did not receive the price agreed

upon, five thousand dollars, for making the assignment of the judgment.

(Objected to as immaterial and irrelevant.)

A. All that I know in reference to that is my own supposition.

Q. Please look at this paper and state whether or not it is a copy of the complaint in this case, which you said you had read.

(Question withdrawn.)

Q. Please look at this paper and examine carefully the statement of facts therein concerning the transactions about which you have testified, and after such examination please state whether or not the facts therein stated are true, if you know whether they are true or not.

(Objected to as incompetent, immaterial, and irrelevant, it not appearing what said paper is nor whether it has anything to do with this cause.)

(Witness is here offered a paper purporting to be a copy of the complaint in this case and here marked Exhibit "A," E. B. for identification.)

131 (Said paper is objected to on the ground that it is incompetent; does not appear to be a copy of the complaint in this action.)

A. So far as the allegations referring to myself, they are substantially true. So far as the allegations have reference to the actions of the defendant Wood, I have no personal knowledge. The allegations with reference to myself and Daniel E. Parkes, as defendants in this suit, I believe to be substantially correct. With reference to the status of the judgment or any proceedings subsequent to the assignment by me, I have no knowledge. As to defendant Seeley, I know nothing except as heretofore testified to by me.

Cross-examination by Mr. ROBINSON, counsel for defendants:

X Q. At the time of the rendition of the judgment referred to what *for* the prospects of its being collected?

A. Lake county was greatly in debt. I didn't regard the judgment as being collectable within any short time, but the law with reference to the collection of judgments and the fact that a large portion of the debt of the county had been declared illegal and void made this judgment somewhat more valuable. It was more a question of opinion at that time as to the value of any evidence of debt against Lake county.

(Counsel for plaintiff moves to strike out the answer because it is irrelevant, immaterial, and mere expression of opinion of witness as to value and legal obligation of county to pay its debts.)

X Q. After the action of Judge Hallet in refusing to grant a peremptory writ of mandate to compell the county commissioners of Lake county to levy a tax out of which to pay this judgment, what,

in your opinion, was the value of this judgment as to its collectability?

132 (Plaintiff objects because question calls for witness'es opinion only and because immaterial, incompetent, and irrelevant.)

A. That is a very difficult question for me to answer. The judgment I regarded as a valid claim against the county, but the fact that the court refused to grant the preemptory writ necessitated a longer time and more trouble and expense in its collection.

X Q. Could you at any time have enforced the collection of this judgment between the time it was rendered and the time of your alleged assignment to Wood?

(Plaintiff objects because question calls for the opinion of the witness only upon facts not in evidence in this case and for his opinion only upon the law controlling such facts.)

A. I could not; at least I had exhausted at that time what legal remedies I knew of for that purpose, and had not at that time succeeded.

X Q. At the time, then, of your assignment to Wood said judgment was not collectable?

(Objected to because immaterial and incompetent and calling for the witness'es opinion as to the legal status of the case on facts not in evidence.)

A. I will state, then, I don't know.

X Q. Why don't you know, as you were the agent and attorney of plaintiff in connection with the collection of such indebtedness?

(Objected to as incompetent and immaterial.)

A. I say I don't know. First, because I am at a loss to understand whether you mean that the judgment was not collectable in the future or whether it was collectable by me at that time.

X Q. I mean was that judgment collectable at the time of
133 that assignment to Wood, and have already so stated?

(Objected to as above.)

(It is agreed by counsel for plaintiff and defendants that all testimony or questions asked of the witness requiring an answer as to the collectability or uncollectability of the judgment shall be regarded as objected to by plaintiff on the ground that the same are immaterial and incompetent, and because such questions call only for the witness'es opinion upon questions of fact and upon questions of law, and because it does not appear in the testimony that the witness knows as to the legal status of said claim nor that he exhausted all the remedies of plaintiff for the collection of said indebtedness; and it is further agreed that this objection shall be regarded as inserted after each question on cross-examination in this deposition.)

(Defendants' attorney agrees that the objection may be consid-

ered to have been made as aforesaid, but does not wish it understood that he agrees that the objection is valid.)

A. I could not collect it, and don't think any one else could at that time.

X Q. What was the nature or cause of the ill will between the county commissioners of Lake county and Higinbotham & Barnes?

A. Highinbotham & Barnes are real-estate agents in Leadville, and at that time held a large amount of county warrants of Lake county and paid taxes for non-residents, and had quite a large amount of business before the board and had quite a large amount of the illegal warrants of Lake county, which had been raised illegally by the board of county commissioners, which they
134 were asking the commissioners to pay, and there were some other matters that I do not now recollect, and they were regarded by the commissioners as men who sought to interfere tomuch in the governmental affairs of the county, as near as I can recollect it.

X Q. From your knowledge of the situation of affairs at Leadville during the period referred to, can you say whether the opinion of the board of commissioners of Lake county in regard to the firm of Higginbotham & Barnes was a justifiable one?

A. No, sir; I am not able to state.

X Q. Are you personally acquainted with the plaintiff, Lucien Baker?

A. I am.

X Q. Was the business you transacted for him as attorney and agent in regard to the proceeding which lead to the judgment alluded to transacted with him personally, by a letter, or through an agent?

A. It was done almost entirely, if not quite, through an agent, A. A. Higinbotham.

X Q. Did you ever see or have in your possession the county warrants of Lake county, Colorado, upon which you obtained the judgment referred to?

A. I saw them and had them in my possession.

X Q. From whom did you receive them?

A. I either received them from A. A. Highinbotham or by express from Lucien Baker. I think it was from Mr. Higinbotham.

X Q. Who gave you all the information necessary to begin and carry the suit on said warrants to a final conclusion?

A. I received all my information, except *by* authority to institute the suit, from the warrants themselves, the records of the board of county commissioners, and the statutes of Colorado.

X Q. You got no information from Lucien Baker, the plaintiff, then?

A. No, sir.

X Q. If the complaint in said action was verified, state by whom.

135 (Objected to because complaint — best evidence.)

A. I don't think the complaint was verified; if it was I do not recollect by whom.

X Q. Was Mr. Higginbotham the witness for the plaintiff in that case?

A. No, sir.

X Q. Did he have anything to do with the case or any conversations in regard to the same, or did he take an active part in the trial of it?

A. I always consulted with Mr. Higginbotham before taking any steps in the proceeding and told what I was going to do. The character of the case was such it was unnecessary to consult with him in regard to it.

X Q. Where was Lucien Baker, the plaintiff, residing at this time?

A. He was residing at Leavenworth, Kansas.

X Q. Did you see him in Leadville from the time that suit was commenced until you took judgment?

A. I saw him in Leadville about the time—I think about the time the judgment was rendered.

X Q. Was he a witness in that case or did he take part in it?

A. He was not and took no part in the trial of the case.

X Q. What became of the warrants aforesaid which were in your possession?

A. They were introduced in evidence and *the* were afterwards filed by me with the clerk and left in his office, and afterwards I saw the warrants in the possession of Frank Reardon, clerk and recorder of Lake county.

X Q. To whom were these warrants issued? Were they all or any of them issued to Lucien Baker, the plaintiff?

A. I think not.

X Q. Do you know when they were assigned to Lucien Baker?

A. I do not; the complaint will show.

X Q. What business is Lucien Baker engaged in, if you know?

A. He is a practicing attorney.

X Q. Do you know whether he had any other investments in Leadville besides these warrants?

A. He owned some real estate there.

— Q. Did you have charge of his real estate?

A. No.

136 X Q. Who did, if you know?

A. A. A. Higinbotham, except in relation — any litigation connected with it.

X Q. You had charge of all his legal business, did you not, and of all his other business A. A. Higinbothan had charge and was his attorney-in-fact?

A. Yes.

X Q. If this is so why did you deem it necessary to send to Mr. Baker for an assignment of said judgment when he had an attorney-in-fact in Leadville?

A. It was considered by Mr. Parkes and myself first that the power of attorney was not sufficient; I mean the power of attorney

from Baker to Higinbotham did not confer sufficient power upon him to assign the judgment, and Parkes insisted upon having the assignment from Baker.

X Q. Did you write to Mr. Baker yourself in regard to the matter?

A. I don't think I did.

X Q. In your conversations with Mr. Higinbotham, the attorney-in-fact, did he express any objection to the assignment of the judgment from Mr. Baker to you?

A. He didn't object except that he desired me to have it understood that the judgment was simply to be held in trust by me for Baker, and at the time had *be* execute to Baker an instrument in the nature of a declaration of trust to that effect.

X Q. Do you know whether the power of attorney to Mr. Higinbotham authorized him to take what you term a declaration of trust?

A. I cannot answer that question at this time, but I don't think the power of attorney contemplated that.

X Q. Did you notify Mr. Parkes that you had given Higinbotham a declaration of trust for Mr. Baker?

A. I think I did, but I am not absolutely positive of it. My best recollection is that I did.

X Q. What do you mean, then, when you say that Parkes
137 knew "that I was acting clandestinely, illegally, and wilfully against the interests of my client" when he knew that you had given that client a declaration of trust and you would be unable to injure him?

A. I mean that Mr. Parkes knew that I procured the assignment for a purpose other and different than the one which I represented to my client and for the purpose of disposing of the judgment and appropriating the proceeds.

X Q. Do you not know as a lawyer that the declaration of trust would follow any transfer you might make of any such judgment, whatever your design might have been?

A. I am satisfied that if that declaration of trust had been recorded it would have annulled the transfer, but it was *nor* recorded, to my knowledge.

X Q. Did you expect or believe that your assignment to Wood, he having knowledge of this declaration of trust, would operate as a valid assignment?

A. I did not expect nor consider, so far as I was concerned, whether the assignment was valid or invalid. My entire object was to get money, and whatever was required to be done I was in a condition to do and did do everything that was required by Parkes in relation to the assignment.

X Q. Then all you did successfully accomplish in this whole transaction was to euchre Mr. Parkes or his friends out of twenty-five hundred dollars, was it not?

A. Yes; I got the twenty-five hundred dollars.

X Q. What became of that declaration of trust?

A. I never saw it after signing it.

Dedirect by E. A. FISKE:

Q. Do you know whether or not any of the defendants in
138 this suit except yourself and Parkes had any knowledge of the declaration of trust referred to before or at the time of the assignment of the judgment to Wood? If yea, state what you know on that subject.

A. I have no knowledge on that subject.

Q. Did you apply for a rehearing in the matter of mandamus before Judge Halleck, in which he refused to grant the writ, as stated by you, or did you take any steps to have his refusal reviewed on appeal or by writ of error?

A. I don't recollect whether I did or not.

E. M. HULBURD.

Subscribed and sworn to before me this 30th day of July, A. D. 1889.

[SEAL.] EDWIN B. SEWARD,
Notary Public.

I, Edwin B. Seward, notary public within and for the county of Santa Fé and Territory of New Mexico, hereby certify that the foregoing is a true and correct statement of all the questions put to and answered by the foregoing witness; that said witness was duly sworn to depose the truth before giving said deposition, and that thereafter he read said deposition and was again sworn to the truth thereof, and that there being no further questions to ask said witness and no further answers to be made by him, and no other witnesses being present whose testimony was desired in this cause before me, I closed the taking of said testimony at the hour of 4.30 p. m. on this the 30th day of July, 1889.

To all of which I hereby certify under my hand and notarial seal this 30th day of July, A. D. 1889.

EDWIN B. SEWARD,
[SEAL.] *Notary Public.*

$8.60, costs, paid by plaintiff.

139 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court.

LUCIEN BAKER, Plaintiff,
vs.
E. M. HULBURD, SAMUEL N. WOOD, N. P. SEELEY, and DANIEL E. PARKES, Defendants.

It is hereby stipulated that the deposition of E. M. Hulburd may be taken in said cause orally before some notary public or clerk of some court of record at Santa Fé, New Mexico, on Tuesday, the 30th day of July, 1889, and that each party or his attorney may attend and examine and cross-examine the said witness at said time and place if he sees fit so to do; that the deposition when taken and cer-

tified by said officer may be used on the trial of said cause, subject to objections by either party to the relevancy or competency of the testimony or any part thereto, but no exception shall be taken to the manner of taking and certifying the same.

Dated July 25th, 1889.

CLINTON REED,
Attorney for Plaintiff.
WOLCOTT & VAILE,
Attorneys for Defendants.

(Indorsed:) In U. S. cir. c't. Lucien Baker *v.* E. M. Hulburd *et al.* Copy. Stipulation.

EXHIBIT "A." E. B. S.

No. of case, 2042. Suit bro't at Denver.

(*Copy of Complaint.*)

To the honorable the judges of the circuit court of the U. S. for the district of Colorado:

Lucien Baker, of Leavenworth, in the State of Kansas, and a citizen of the State of Kansas, brings this his bill ag't E. M. Hulburd and Daniel E. Parks, of Leadville, in the State of Colorado, and N. P. Seeley & Sam'l N. Wood, of Denver, in the State of Colorado, and each of them being a citizen of the State of Colo.; and
140 thereupon y'r orator complains & says, 1st, that the property in dispute in this suit exceeds in value, exclusive of costs, the sum of $300.00. 2d. That on or about the — day of May, 1883, the county of Lake, in the State of Colorado, being indebted to y'r orator in the sum of $15,000.00 and upwards, y'r orator commenced an action in the court ag't the board of county commissioners of s'd county of Lake for the recovery of s'd debt & interest thereof, and that such proceedings were thereupon had in such suit that afterwards, to wit, on the 12th day of November, A. D. 1883, y'r orator recovered a judgment ag't the s'd board of Co. commissioners for the sum of $16,054.21, damages, & costs, as by the record of s'd judgment now remaining in the office of the clerk of this honorable court will more fully and at large appear; and y'r orator further says that the said judgment was then and there and at all times since the same was entered as aforesaid and still is good and collectable and worth the said sum of $16,054.27. 3d. And y'r orator further says that on or about the 26th day of May, 1886, the s'd E. M. Hulburd, who was the attorney of y'r orator and the attorney of record of y'r orator in said suit, and said Daniel E. Parks, who was then and still is the county attorney of Lake county, and one N. P. Seeley, a dealer in public securities and largely interested in and a holder of a large am't of Lake Co. bonds & warrants, and one Sam'l N. Wood fraudulently combined and conspired together for the purpose of cheating and defrauding y'r orator out of s'd judgment and the benefits thereof and the debt evidence secured thereby and to produce an assignment of s'd judgm't. 4th. And y'r ora-

tor further says that s'd Hulburd, Parks, Seeley, & Wood then and there, as y'r orator is informed & believes, — between themselves that said Hulburd should procure from y'r orator an assignment of s'd judgm't under pretence of and for the pretended purpose of thereby being able to collect the same for the use of y'r orator, and *then* it was then and there agreed by and between said Hulburd, Parks, Seeley, & Wood that when the said assignment should be procured and made to said Hulburd he should then and there reassign the same to the said Seeley or Wood or both of them for some small am't, far less than the value of the same, but just *t*hat sum y'r orator is unable to state; that the s'd Hulburd, on account of being the attorney of y'r orator and by virtue of the confidential relations existing between the s'd Hulburd and y'r orator and in pursuance of said fraudulent conspiracy and agreement, called upon one A. A. Higinbotham, the then agent of y'r orator, who had charge and management of the business of y'r orator, and, pretending to be acting solely in his capacity of attorney for y'r orator, stated to s'd Higinbotham that he, said Hulburd, & s'd Parks had hit upon a plan by which s'd judgm't could be collected; that Parks had told him the county had gotten rid of a large part of its indebtedness, and that this judgm't was first in order to be paid, and that the commissioners were willing to pay it, but would not do so unless it was first assigned to said Hulburd, all of which was by the s'd Hulburd & Parks known to be untrue, and said statement was made for the sole purpose of procuring such assignment from y'r orator and in pursuance of said fraudulent agreement and conspiracy as aforesaid; that the said Higinbotham communicated said proposition to y'r orator and recommended that y'r orator make the assignment solely for the purpose of collection, and y'r orator, having the utmost confidence in the integrity of the s'd Hulburd and believing by the means of such assignment the said Hulburd, with the assistance of s'd Parks, would be able to collect s'd judgm't, afterwards and on the 25th day of May, A. D. 1886, executed under his hand to s'd Hulburd his certain instrument in
141 writing, by which y'r orator sold, assigned, and transferred to said Hulburd said judgm't and the money due and to become due. Said assignment, to which y'r orator refers to for certainty, is on file in the s'd cause in this circuit; that s'd assignment on its face purports to be made for value, but the fact is that the same was made without any consideration and solely for the purpose of enabling the said Hulburd to collect the same, all of which was well known to the s'd Hulburd, Parks, Seeley, & Wood. 5th. And y'r orator further says that he forwarded s'd assignment to his agent, A. A. Higinbotham, at Denver, to be by him delivered to the said Hulburd and at the same time forwarded to the said Higinbotham a certain instrument in writing, a declaration of trust, to be executed and delivered by said Hulburd to y'r orator at and upon the delivery to him, the said Hulburd, of the said assignment, which instrument of writing and declaration of trust was then and there delivered by said Hulburd to said Higinbotham for the use and benefit of y'r orator, and is in words and figures as fol-

lows, to wit (here follows a copy of Hulburd's receipt), by means of which assignment & said declaration of trust — became and was the holder of s'd judgment in trust and for the sole use and benefit of your orator; that said instrument in writing & s'd declaration of trust to which y'r orator refers for certainty is in his possession, ready to be produced and proven. 6th. And y'r orator further says that the s'd defendants, Hulburd, Parks, Seely, and Wood, well knew that the said judgm't was collectable and of the value of the said sum of $16,054.27 & accrued interest, and they fraudulently & corruptly agreed with the said Hulburd to pay him a sum of money, but what am't y'r orator is unable to state, in consideration of his procuring an assignment of said judgm't, which judgm't he was then to assign to them or to some one of them; and y'r orator is informed & believes and charges the fact to be that the said defendant Seeley, with the assistance of said Parks, managed the entire transaction and paid whatever money the s'd Hulburd received for his share in the s'd transaction, and, with the assistance of s'd Parks, procured an assignment of all the interest of s'd Hulburd to be made by said Hulburd to said defendant, S. N. Wood; and, while the s'd Wood now claims that he bought the said judgm't from s'd Hulburd and actually paid him therefor the sum of $2,500.00, y'r orator is informed and believes and charges the fact to be that no such sum was paid, and that all the money that was paid to said Hulburd was paid by N. P. Seeley and was paid by him in Leadville on or about the 17th day of June, 1886, and that such assignment was then and there delivered by said Hulburd to said D. E. Parks with the name of the assignee left blank, and that the said D. E. Parks, having first inserted the name of S. N. Wood in the blank space of said assignment, procured the assignment to be filed with the papers in said cause in the office of the clerk of the court on the 21st day of June, all of which the said D. E. Parks claims to have done for and on behalf of and as the agent of the said defendant, S. N. Wood; but y'r orator is informed and believes and charges the fact to be that the said Parks was the agent of N. P. Seeley as well as said Wood, and that the assignment was made to S. N. Wood for the joint benefit of Seeley & Wood. 7th. And y'r orator further says that at the time of the agreement by said Hulburd as aforesaid the said Hulburd had no interest whatever in said judgment except as trustee for y'r orator as aforesaid, and that the said defendants, Parks, Seeley, & Wood, had actual notice of the purpose and conditions of the said assignment to said Hulburd and the terms & provisions of said declaration of trust hereinbefore set forth. 8th. And y'r orator further says that, not-
142 withstanding the fraudulent procurement of said assignment and the invalidity thereof, as herebefore stated, the said defendant, S. N. Wood, still claims to be the owner of said judgment and is demanding payment thereof from the board of Co. commissioners of said Lake Co., Colorado, and y'r orator alleges that the board of Co. com'rs of said Lake Co. say that the board is about to levy a tax for the payment of this debt among others due and owing by said county, and say to y'r orator that he must show a clear title

to said judgm't before it will be paid to him, and that by reason of such pretended assignment of said judgm't y'r orator is greatly hindered and embarrassed in the collection of said judgm't, and in fact prevented from the collection of the same or any portion thereof.

Y'r orator further shows that the said S. N. Wood may transfer his pretended interest in said judgm't to some stranger, which shall further complicate the title of y'r orator and his remedy for the collection of said judgm't; all of which actions and doings of the said E. M. Hulburd, Daniel E. Parks, N. P. Seeley, and S. N. Wood, the defendants, are contrary to equity and good conscience and tend to the manifest wrong & irreparable injury of y'r orator in the premises. In consideration of the premises and inasmuch as y'r orator is entirely remediless in the premises, according to the strict rule of the common law, and cannot only have relief in a court of equity, where matters of this nature are cognizable and relievable, may it please y'r honors to grant unto y'r orator a writ of subpœna in chancery, issued out of and under the seal of this court, to be directed to the said E. M. Hulburd, D. E. Parks, N. P. Seeley, and S. N. Wood, who are each made party defendants to this y'r orator's bill, commanding them and each of them to personally be and appear before this honorable court, and that the defendants may answer all and singular the premises, but not upon oath or affirmation, answer under oath or affirmation being expressly waived by the complainant. May it please y'r honor- to grant unto y'r orator a writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said N. P. Seeley, S. N. Wood, and D. E. Parks, restraining & enjoining them and each of them from in any manner selling, assigning, transferring, or disposing of the said judgm't and from demanding payment of the same from the board of county commissioners of Lake county until the final hearing of said cause; and upon the final hearing of said cause the said pretended assignment of said Hulburd to S. N. Wood may be cancelled and held to be fraudulent and void and said assignment from y'r orator to said Hulburd be canceled, and for such further relief in the premises as may be agreeable to equity and good conscience and the nature of the case requires; and that y'r orator recover his costs in this behalf expended.

CLINTON REED,
Solicitor for Complainant.

Sworn to & subscribed 23d Oct., 1886.

——.

(Indorsed:) 2042. Circuit court U. S. Lucien Baker *vs.* Sam'l N. Wood *et al.* Deposition E. M. Hulburd, behalf complainant. Opened, published, and filed Dec. 9, 1889. William A. Willard, clerk.

143 And afterwards and on, to wit, the 28th day of July, A. D. 1890, the same being one of the regular juridical days of the May term, A. D. 1890, of said court—present, the Honorable Moses

Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: George Taylor, Administrator, Substituted as a Defendant.

LUCIUS BAKER *vs.* E. M. HULBURD, DANIEL E. Park-, N. P. Seeley, and Samuel N. Wood.	2042. In Chancery. Bill to Cancel an Assignment of Judgment and for Other Relief.

At this day comes the said complainant, by Clinton Reed, Esq., his solicitor, and suggests to the court the death of the said defendant, N. P. Seeley, and on motion of the said complainant George Taylor, administrator of the estate of the said N. P. Seeley, deceased, is hereby made a defendant herein.

And afterwards and on, to wit, the 21st day of August, A. D. 1890, came again the said complainant, by Clinton Reed, Esq., his solicitor, and filed in said court and in said cause his præcipe for and sued out of and under the seal of said court a pluries writ of subpœna.

And the said pluries subpœna and marshal's return *is* in words and figures as follows, to wit:

Pluries Subpœna and Return.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *District of Colorado*, } *ss:*

144 The President of the United States of America to Charles Taylor, administrator of the estate of N. P. Seely, deceased, impleaded with E. M. Hulburd, Daniel E. Parks, and Samuel N. Wood, Greeting:

You are hereby commanded that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in October next (it being the 6th day of October, A. D. 1890), to answer the bill of complaint of Lucian Baker, filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of the

said circuit court, at the city of Denver aforesaid, this 21st [SEAL.] day of August, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the 115th year.

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Memorandum.

The above-named defendant is hereby notified that unless he shall enter his appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable the complainant's bill — be taken against him as confessed and a decree entered accordingly.

145 WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Marshal's Return.

UNITED STATES OF AMERICA, *District of Colorado*, } ss:

DENVER, *August* 23*d*, 1890.

I have duly executed the within writ by delivering to George H. Taylor, administrator of the estate of N. P. Seely, deceased, personally, a true copy of the within writ at the place and time as follows, to wit: As to George H. Taylor, on the 23d day of August, A. D. 1890, at Denver, in Arapahoe county. George H. Taylor accepts service as administrator of the estate of N. P. Seely, deceased, the name Charles Taylor in the within writ being an error.

This writ therefore returned executed, as the law directs, this 23d day of August, A. D. 1890.

ALBERT H. JONES, *Marshal*,
By L. F. LONG, *Deputy Marshal*.

Marshal's Fees.

Service, 1 persons at $2.00 *each*	$2 00
Mileage, 1 miles at 6c., going only	06
Total	$2 06

(Indorsed:) Gen. No. 2042. Circuit court of the United States for the district of Colorado. In chancery. Lucien Baker *vs.* E. M. Hulburd *et al.* Pluries subpœna *vs.* Taylor, administrator, &c. Returnable to rule day, first Monday in October, A. D. 1890. William A. Willard, clerk. Filed this 25 day of Aug't, A. D. 1890. William A. Willard, clerk, by F. W. Tupper, deputy clerk. Clinton Reed, of Leadville, compl't's sol'r.

And afterwards and on, to wit, the 1st day of October, A. 146 D. 1890, came again the said complainant, by his solicitor aforesaid, and filed in said court and in said cause a certain stipulation as to pleadings.

And the said stipulation is in words and figures as follows, to wit:

Stipulation: Pleadings to Stand as to Taylor, Executor, etc., Without Amendment.

In the Circuit Court of the United States, District of Colorado.

LUCIEN BAKER
vs.
E. M. HULBURD, SAMUEL N. WOOD, DANIEL E. PARKS, and George Taylor, Administrator of the Estate of M. P. Seeley, Deceased.

And now comes the said George Taylor, executor of the estate *to* M. P. Seeley, deceased, by J. N. Hughes, his attorney, and the plaintiff, by Clinton Reed, his attorney, and the said J. N. Hughes enters the appearance of the said Taylor as such administrator, and it is stipulated that said cause shall proceed without any amendment charging said Taylor as administrator, but the answer of the said Seeley, deceased, shall stand as and for the answer of the said administrator, and the same shall be heard and determined upon the testimony taken in said cause with like effect as if an amended or supplemental bill had been filed containing apt words to charge said defendant Taylor as such administrator.

CLINTON REED,
Att'y for P'ff.

147 (Indorsed:) 2042. Lucian Baker *vs.* E. M. Hulburd *et al.* Stipulation as to pleadings by Taylor, administrator of Seeley, &c. Filed Oct. 1, 1890. William A. Willard, clerk.

And afterwards and on, to wit, the 18th day of October, A. D. 1890, came John W. Webster, Esq., an examiner in chancery of said court, and filed in said court and in said cause his report of the testimony taken before him on behalf of the defendants.

And the said report is in words and figures as follows, to wit:

Examiner's Report of Testimony — Behalf — Defendants.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States in the District of Colorado.

LUCIEN BAKER, Complainant,
vs.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD, Defendants.

Testimony of witnesses taken before me, John W. Webster, one of the examiners in chancery of said circuit court, by consent of counsel, on behalf of the defendants in the above-entitled cause, on this 8th day of June, A. D. 1888, at two o'clock p. m.

And it being made to appear that N. P. Seeley, one of the de-

fendants whom they desire to examine as a witness on their behalf, is sick and unable to attend in person before the examiner, therefore, at the request of E. O. Wolcott, Esq., solicitor for defendants, and consent of Clinton Reed, Esq., solicitor for complainant,
148 I, as examiner, accompanied them to the house of N. P. Seeley, Esq., No. 1711 Welton street, Denver, Colorado, where we proceeded to take the testimony, the same to be used in every particular as though it had been taken at my office, and which is as follows:

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the United States Circuit Court in and for said District.

LUCIEN BAKER, Complainant,
vs.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD, Defendants.

Thereupon the defendants produced N. P. SEELEY, who, being by me duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Direct examination by E. O. WOLCOTT:

Q. Mr. Seeley, you are familiar with the substance of the complaint in this case and the answer of Seeley and of Wood?

A. I think I am; but there has nor been much business in my head for the last six months.

Q. I will ask you, Mr. Seeley, to state to the master as precisely as you can all the facts as you now remember them respecting the purchase and assignment of that judgment.

A. As I told you, I am not up at all as to the precise dates, but the first I remember of it was when Mr. Hulburd came into the office and wished to sell me the judgment at a price which I remember now as being either fifty or sixty cents on the dollar, and I refused to pay it. He said it had been assigned to him and was his to all intents and purposes. I told him that I did not
149 care to consider it; that the debt of the county was so large that at that price I would not want to look at it at all and did not. Later on—I think it was during some meal at the club—I used to sit next to Mr. Wood at the club, and whole we were eating at the same meal he said, "Seeley, why not go and buy that judgment?" He said it had been offered to him, but no price put on it. I told him of the conversation I had had with Hulburd and that he talked too much. About that time I went, my impression is, to California, and when I came back I met Mr. Wood on the street, I think the next morning, and he said that he had just closed the trade for that judgment against Lake county, and, by the way, we had quite a full talk the other time in regard to whether we

would buy it at all if we could buy it cheap enough, and he said he has bought the judgment—absolutely bought it—and he turns around and said, "Now, here, we have talked this over two or three times, and you can declare yourself now whether you are in or out." I said, "Well, I will declare myself in." He said, "Well, I won't take it up for two or three days yet; I have not had time to talk it all up, and in the meantime I will consider you are an owner with me." I said, "Yes; it is all right." That was some time during the middle of the week, I should judge, because I know I had an appointment to meet with the commissioners—to meet them in Leadville the following Monday—and I told Sam. Wood. He said he wanted to know if everything was all right in the court records, and he had taken time to pay for it, in order to look up all the details of the matter, and that he had hedged in buying enough to say that if there was anything wrong about it he would not take it. He said to me, "Well, if your are going up to Leadville Monday you look around and see if there is anything wrong there, and, if not, take the judgment from Hulburd for me and pay him $2,500;" which, by the way, was the amount he told me he had agreed to pay for the judgment, or, rather, for that portion of the judgment which remains unpaid. The county had paid before this part of the judgment by giving some warrants. They paid one note by giving another. By the way, you people sue us for the whole thing that we never bought.

Q. How much had been paid?

A. I do not know quite, but all of $3,000, I guess, and they have sued us for the whole judgment, when we never had it, but only the balance remaining unpaid.

Q. Now go on with the statement.

A. I got up to Leadville and I do not think anybody knew I was there quicker than Hulburd, or who come in sooner, and he wanted some money right off. I said I did not want to pay out any money on Wood's order until I looked around and saw that everything was all right. I took the additional precaution to telegraph the clerk of the court here to know if any disposition had been made or any change of the books here. I told Hulburd very plainly that I had telegraphed Bishop and when I got his answer and had looked around there to see if there was anything wrong there I would pay him. In the meantime I made a draft on Wood at Trimble & Hunter's bank and got a certificate of deposit in my own name for the amount of $2,500, so I would be fixed to pay him when I wanted to. Later on I got a dispatch from Bishop that no change had been made here; that it was all right. I then met Hulburd again and made an appointment to meet him at some future hour—two o'clock, I think; something like that. I want to say right here, distinctly and positively, that I never knew or heard of any declaration of trust in this matter or that there was such a thing known at all. I asked Hulburd in so many words before witnesses: "Now, you know you are a little uncertain, and I want you to tell me if there is any reason on the face of the earth why you have not full power

to dispose of this judgment and whether it is not yours?"
151 He said it was his and went on to explain why it was and how it came to be in his possession, and all that. He said he had worked for Higgenbotham and Barnes—had been in Barnes' litigation up there with —— —— and others, which I knew to be a fact, and that they had paid him but a very small sum; that for four years he had carried on their business, and that Barnes settled with him out of this, and the explanation looked as though there might be something in it. It was a good explanation to me.

Q. Is Hulburd some relation of Baker's?

A. He is a son-in-law of Mr. Barnes.

Q. He is Higgenbotham's partner?

A. Yes, sir. He said he had attended to their litigation there for four years and had lived cheap and had nothing and got along the best way he could, and that he had always promised him that out of this he should be paid.

Q. What relation was Higgenbotham and Barnes to Baker?

A. Father-in-law or something.

Q. Some relation between them and Baker?

A. Yes; and the fellow told a straight story, as straight as I ever heard, and I said, "This is only a gamble—a judgment against Lake county is something like an interest in a goose pasture," and I thought it looked like a gamble, and I said, "Now, we are going to pay you this money and I want to know everything is all right, and I want you to tell me how it is yourself in every way." He said, "Don't my papers show?" I said, "Yes, and I want to know if there is any bottom to them." I knew, too, at the same time, that he had had warrants issued to him, or he had warrants issued by the county in payment of this warrant and delivered to him, and he had money from John Alford, the purchaser of these
152 warrants. In the meantime the commissioners were in session and I suggested to Mr. Alford—Alford was about a quorum of the commissioners, anyway—Alford had supposed he was going to use these warrants and did not make a sale of them. "Now," I said, "John, let us go down to the commissioners and see if you cannot make a trade in this way: That they take these warrants and cancel them, or you stand in as a joint owner. They cannot take the warrants back and cancel them if the judgment stand intact; otherwise there should be an endorsement of the judgment to the amount of the warrants issued."

Q. At the time you purchased this judgment did you have full faith that the judgment was the property of Hulburd?

A. Absolute. I never took more pains in my life in any business transaction.

Q. Did you have any agreement with Hulburd or otherwise as to the purchase—an out and out purchase—for the sum of $2,500?

A. Not a particle.

Q. What figure, if any, did Parks have in this transaction?

A. I think he was agent and always thought he was in with it and got part of the $2,500. I was watching Parks as well as Hulburd.

Q. Did he act as your agent or Wood's agent?

A. I don't know. I was in California. I think at the time there was nobody more anxious than Parks to make a trade, and I think at the time at least he—he said that Hulburd had borrowed some money from him and he was to get that back.

Q. State whether or nor there was any combination or conspiracy with yourself or yourself and Wood with Hulburd or Parks or anybody else respecting this judgment.

A. No, sir; all the trade I made was with Wood to pay him $1,250.

Q. Had you ever heard, up to the time of this purchase, of a declaration of trust?

153 A. Never, and not until a long time afterwards.

Q. State whether or not you knew that this judgment was collectible and knew of its full value.

A. We had some more at the same time, and we are offering at a great discount. Later on decisions took a better shape than then. How the trade was made with Hulburd for the judgment I do not know, for I was not in the country. My purchase was made from Wood.

Q. This assignment was for the general benefit of yourself and Mr. Wood to the extent of these warrants?

A. I think that the assignment from Hulburd was made directly to Wood.

Q. Exactly; but it was for the benefit of Wood and yourself?

A. Wood and myself.

Q. And Alford had an interest up to the amount of certain warrants that he had already bought?

A. Certain warrants that he had already bought. I think the county commissioners had taken back from Alford——

Q. You purchased before this action of the county commissioners with Hulburd?

A. Yes; the thing was this way: We were in trouble with Alford. We did not know how to settle with him. We had a judgment transferred to us and Alford had to get part pay in it.

Q. State whether or not, in your opinion, $2,500 was a reasonable value for the judgment.

A. I think it was, and do not think another dollar could have been got in the market for it.

Q. State whether you know or heard of any other assignment of the litigation executed by Hulburd to anybody, either as a trust or for collection.

A. I never did, and had Mr. Hulburd's assurance that everything was all straight.

It was stipulated and agreed by counsel for complainant,
154 C. Reed, Esq., that the foregoing testimony might be read in evidence without the signature of the witness, his signature being waived this 8th day of June, A. D. 1888.

JOHN W. WEBSTER, *Examiner.*

UNITED STATES OF AMERICA, *District of Colorado*, } ss:

In the Circuit Court.

LUCIEN BAKER, Complainant,
vs.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD, Defendants.

By consent of counsel the further taking of testimony in this case on behalf of the defendants is resumed this Wednesday, the 23rd day of April, A. D. 1890, at the hour of 2 o'clock p. m.

Present: C. Reed, Esq., solicitor for complainant, and J. F. Vaile, Esq., solicitor for defendants.

The defendants here produce DANIEL E. PARKS as a witness, who, being duly cautioned and affirmed to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy in this case, deposed and testified as follows:

(By J. F. VAILE:)

Q. State your name, age, business, and residence.

A. Daniel E. Parks; age, 50 this month; business, lawyer, and residence, Denver, Colorado.

Q. Are you the Daniel E. Parks who is named as a defendant in this suit?

A. Yes, sir.

Q. Did you ever occupy any official position in Lake
155 county; if so, what and when?

A. I was attorney of that county for the board of county commissioners from the 23rd day of April, A. D. 1883, to the 1st day of January, A. D. 1890, when I resigned.

Q. Have you knowledge of a certain judgment rendered in favor of one Lucien Baker and against the board of county commissioners of the county of Lake in a suit brought in the United States circuit court of this circuit, judgment having been rendered on the 12th day of November, 1883?

A. Yes. I was attorney for the county in that matter, which was compromised by the judgment spoken of.

Q. Have you read over the depositions taken on behalf of the plaintiff in this suit, and especially the evidence of one E. M. Hulburd, named as a defendant in the complaint?

A. I think so, but don't know whether I have read Mr. Lucien Baker's testimony or not; think so.

Q. But you have read the testimony of Mr. Hulburd?

—. Yes.

Q. I will ask you, Mr. Parks, to proceed and tell in your own way your knowledge of facts relating to this judgment and the assignment of that judgment from Mr. Hulburd to Samuel N. Wood, and state all facts of which you have knowledge that bear upon the transaction; and if in so doing you wish to refer to any of the testimony already taken, you may do so.

A. Well, let me say, by way of preface to begin with, that I was attorney of the county during that period, and, while the board of county commissioners were the governing power of the county, I think I was depended upon to manage the affairs of that county, and did so to the best of my ability. When I was appointed, in 1883, county warrants were almost worthless; have known them to be sold at ten cents on the dollar. There was an outstanding public county debt of
156 over a million dollars. I undertook to manage the affairs as the attorney of that county under the depressing state of public affairs, while at the time I undertook it I had misgivings of the outcome, but hoped to relieve the county in some way, and I think did till the end of my administration. I was consulted far and near by the creditors of the county; overtures were made to me for settlement in various forms, some of which were accompanied with propositions to sell the county out, which I didn't do. A great many people wrote me letters and came to me personally here in Denver and elsewhere; conferred with me about the affairs of the county, and there were such a multitude of inquirers and the business was so extensive that I don't pretend to carry in my mind all the facts that transpired during that time. At the time of my appointment, in 1883, the county was limited as to its power of taxation, which subsequent legislation in a measure relieved, gave additional powers to the board of county commissioners to levy taxes to meet the outstanding debt and the current expenses. At the time of my appointment, and I think up to the present time—at least up to the time of my resignation on the 1st of January, 1890—the revenue of the county had been barely sufficient to pay current expenses, and at the time this Baker judgment was given, and I think at the time when that was sold or assigned to Mr. Wood, the board of commissioners, I am of the opinion, had power to levy only the fifteen mills for current expenses—ten mills for general fund, five mills for special fund. I think in 1887 the legislature passed a law authorizing the levy of fifteen mills to pay judgments, and it had been and had to be the policy of the county and had to be my policy up to that time to defend against the collection of judgments against the county, for the reason that the revenues of the county were barely sufficient to pay current expenses. While there was some difference of opinion about the status of the law and as to the power of the county to pay judgments, I learned from my practice in the United States court where this judgment was had that it was the law of that court, and I am of the opinion, no judgment levies could be enforced, as the law stood prior to 1887, where the taxes and revenues were necessary to pay current expenses. In reference to this particular judgment, for reasons which the board of county commissioners considered sufficient, their policy, I think, was not to pay this judgment held by Mr. Baker until they were compelled to or had to, and as long as the law remained as it did I advised them that Mr. Baker could not collect this judgment. They made certain attempts by mandamus proceedings in the United States court to enforce the payment of this judgment, and I success-

fully defended against their efforts to enforce the levy of a tax to pay it, and the law remained *in statu quo*, I think, until the passage of the law in 1887. That law, I think, leaves it in the discretion of the board to levy or not, as they choose, and by the terms of it they may not be compelled to do so, I think, as appears from the law.

Now, I wish to state the reasons why the board of county commissioners were averse to paying this judgment to Mr. Baker; that was they believed and understood that Mr. Baker was a nominal plaintiff; that the judgment was really Mr. Higgenbotham's or Mr. Barnes', or both. In some way they got it into their heads (whether they were correct or not) that the situation in which the county was—in enormous illegal debt—was partially due to the dealing of Mr. Higgenbotham and Mr. Barnes, who were in business at Leadville for a long time, in county warrants; that the depreciation in the value of the county warrants was due to them and
158 their dealings therein in a measure.

(Witness is here handed the deposition of Mr. Hulburd.)

Mr. Hulburd was very active in the interests of his clients to obtain payment of this judgment and resorted to all the means, I think, he had in his hands in the courts, and was importunate with the board of county commissioners, and, while he was to some extent popular and *through* well of, they refused, even at his solicitation for his clients, to take any action in the direction he desired. As attorney of the county, he used to come to me and ask me if I could not intercede for him before the board of county commissioners, and importuned me to assist him to obtain payment of the judgment in some way, and I have uniformly told him that as long as that judgment remained in the situation it was I believed the board of commissioners would not pay it until they were compelled to, and then they would have to be compelled to by some power of some court, and I suppose he told his clients what I said.

I desire to call attention to the deposition of Mr. Hulburd on the second page and to these words: "About the time or soon after these proceedings last mentioned D. E. Parks, one of the defendants in this cause and the attorney of record in said suit and the attorney for said Lake county in the proceedings above referred to, and myself began negotiations between ourselves the object and purpose of which was to make something for ourselves out of the judgment in that action. After several projects and schemes were considered and abandoned it was agreed between us that if I could get an assignment from the plaintiff in that action to me of the judgment against said Lake county that he, Parks, would find a man that would pay me eight thousand dollars for it, the original judgment being in the neighborhood of sixteen thousand dollars." I desire to say that that is wholly and absolutely false and conceived in the brain, in my judgment, of this man, who was the attorney of Mr. Higgenbotham and Mr. Barnes and, so far as I know, Baker to the extent that he has been. I will add here that he impor-
159 tuned me to assist him to get some money from the county

for his clients out of that judgment, saying that they owed him and he had done business for them a long time in various courts; that they hadn't paid him anything, and that if he did not get any that way he would not get it. I replied to him on such occasions that my understanding was that as long as that judgment remained as it was the board of county commissioners could not be constrained to take any action in reference to it. He then, if I recollect correctly, said something about getting an assignment to himself for the purpose of getting some money out of it in some way—levying a tax or in some way get the commissioners to act for him. He asked me, I think—I won't be particular to recollect all the details of this matter, only the substance of it—if I would object, as attorney of the county, and use my influence against his making a compromise and doing something to effect his purpose. I told him I had no reason to oppose him on personal grounds; I had no personal interest; that I should throw no obstacles in his way or put any in his way.

Q. At page 8 of Mr. Hulburd's testimony I desire to call attention to this answer of Mr. Hulburd: "It was considered by Mr. Parks and myself, first, that the power of attorney was not sufficient. I mean the power of attorney from Baker to Higgenbotham did not confer sufficient power upon him to assign the judgment, and Parks insisted upon having the assignment from Baker."

A. My recollection is he came to me after that and said that he had arranged to get an assignment from the nominal owner of the judgment, and that Mr. Higgenbotham agreed to it. He wanted to know what would be sufficient to justify the county and myself, as attorney of the county, to act and recognize him. I don't recol-
160 lect the conversation that passed between us, but the effect of it was that if he exhibited to me an assignment or the paper by which he proposed to obtain the control and power over the judgment he sought to obtain I could very soon tell whether it was sufficient or nor or whether the county would recognize it; so that if he means by this answer that I refused to approve, acting for the county, the supposed assignment by power of attorney referred to I do not dissent from it; but if he means that I dictated or objected to the assignment as being a party to his transaction the answer is untrue; whatever I required him to do was in the interest of the county, and so stated at the time.

Q. The next question on the same page: "Did you notify Mr. Parks that you had given Higgenbotham a declaration of trust for Mr. Baker? A. I think I did, but I am not absolutely positive of it. My best recollection is that I did."

A. Hulburd never gave me any such notice. I had no occasion to know it. The duties of my office as attorney of the county did not require it. It was only sufficient for me to know who had the legal title to that judgment to justify me in advising my client, the county of Lake, in reference to it and its payment.

Q. The next answer on the same page, these words in reply to a question: "I mean that Mr. Parks knew that I procured the assignment for the purpose other and different than the one which I

represented to my client and for the purpose of disposing of the judgment and appropriating the proceeds."

A. I knew nothing of his purposes except as he declared them to me—to procure assignment of the judgment, etc.—get something out of it and something for his clients. I knew nothing of what he said to his clients; didn't care what he said to them; didn't know that he obtained the assignment for the purpose of disposing of the judgment and appropriating the proceeds; would not have believed that he would have done it until it showed itself subsequently. Moreover, if I had any knowledge or judgment on the subject at all, I suppose from what he said in reference to
161 using and controlling the judgment that he was acting in harmony with his clients, and that his clients were willing for him to do the best thing possible with the judgment in case he had it assigned to him so that he could control it.

Q. Did you know that he had given a declaration of trust to his clients?

A. No; he knew in conferring with me that I was of the opinion that the county would recognize the assignment of that judgment legally according to law, and in fixing up this assignment and transfer and conferring with me about it he concealed the fact, if such was the fact, that he had given back a paper to Mr. Baker, which amounted to making the transaction a trust, and I don't know now, except from the allegations of the complaint and the testimony taken herein in behalf of the plaintiff, that the assignment to him was a trust. I have no personal knowledge about it.

Q. This answer on the same page: "I did not expect nor consider, as far as I was concerned, whether the assignment was valid or invalid; my entire object was to get money, and whatever was required to be done I was in condition to do and did do everything that was required by Parks in relation to the assignment."

A. I answer that he was required to conform to my judgment and dictations so far as the papers in reference to the assignment were concerned, because the county of Lake and myself as its attorney would not recognize any claim under that judgment unless they had a legal and proper assignment. It was part of my business to see where these judgments were and who owned them before any money was paid on them. If he means by that answer other than as I state, the answer is untrue. If his entire object was to get money and to defraud his clients, he kept that object concealed from me. Had I known that he held the judgment as a trustee I should have advised the county differently.

162 Q. Mr. Hulburd, in his deposition on page 3, makes this statement: "Parks had full knowledge that the assignment was made to me without consideration and knew that I was acting clandestinely, illegally, and wilfully against the interests of my clients and knew that it was my intention to appropriate all the money I received to my own use." I will ask you to state whether or not it is true that you had any such knowledge.

A. Not at all, sir. The statement is false as to my knowledge. As I said before, I didn't know that he had such a purpose.

Q. In Mr. Hulburd's deposition, on page 2, he states, in reference to the assignment of the Baker judgment to Mr. Wood, as follows: "Mr. Parks claimed to me that Mr. Wood was advised by Mr. Seeley not to pay any greater sum than five thousand dollars. I assented to that." You may state whether or not there was any such conversation between yourself and Mr. Hulburd or any claim of that kind on your part to him.

A. No, sir.

Q. He proceeds further: "There was considerable bartering between us in reducing it from eight thousand dollars to five thousand dollars, and Parks claimed to me that it was only through his influence and assurances made by him to Wood to the effect that he would use his influence in having the judgment paid that induced Wood to buy the judgment at any price." I will ask you to state whether there was any such conversation between yourself and Mr. Hulburd or whether or not you made any such agreement.

A. No, sir; no such conversation.

Q. Speaking of the assignment from Hulburd to Wood, Mr. Hulburd testifies on page 3 of his deposition: "The assignment was written by Daniel E. Parks and, I think, copied by me. After the assignment was executed I delivered it at the request of Mr. Parks to the defendant N. P. Seeley at the Tabor Grand hotel, in Leadville, in the presence of Mr. Parks, and received from Mr. Seeley at that time a check or certificate of deposit, I don't recollect now
163 which, for the sum of twenty-five hundred dollars." Will you please state the facts relating to that transaction as they were, so far as you were in any way a party or cognizant of them?

A. Mr. Hulburd was a young lawyer and had not had as much experience as some of the others of us at the bar, and it is possible that and I think he did ask me to suggest some general form that the county would recognize as an assignment. I don't recall all about that. It is possible he did it and it is possible that I may have suggested a form to him, got a book out—something of that sort—but if I did it was done as the attorney of the county to advise him in advance of what he could expect in reference to the status of the county on the subject he was trying to deal with. If he means by this answer that I drew a form of assignment and he copied it and delivered it or showed it to Mr. Seeley, implying thereby that I dictated the transaction as a conspirator with him to wrong his clients, it is entirely and wholly false. I didn't request him to show the form of assignment to Mr. Seeley or anybody else. My suggestions were to the effect as to what would be recognized by the county and by me as its legal adviser. I recollect Mr. Seeley's being up there at the time that Hulburd is said to have assigned or sold it or whatever he did with it or you might call it, but I have no recollection of his being at the Tabor Grand hotel, in Leadville, and my recollection is so positive that I may say it as a fact, if I had been there at the Tabor Grand hotel with Mr. Seeley or Mr. Hulburd at the time he specifies I would have remembered that.

Q. You mean to say that you were *nor* there under such circumstances and at this time?

A. I was not there under such circumstances.

164 Q. Didn't observe or see any transaction between him and Mr. Seeley in reference to this matter, as he states?

A. No

Q. He says: "I made no objection at that time or any time after to the amount paid me, but it was only half what Parks and I had agreed upon that I should receive."

A. That is untrue, so far as it intimates that something was agreed upon between me and Hulburd or refers to me.

Q. Had there been any agreement between yourself and Mr. Hulburd as to what he was to receive on any assignment made by him of this judgment?

A. No; I had no interest in looking after his business; if looking after the county's interest I did pretty well.

Q. Mr. Parks, at the time that this Baker judgment was assigned by Mr. Hulburd to Mr. Wood, which by the record appears to be on or about the 19th day of June, 1886, will you state what was the condition of that judgment, as to whether or not any portion of it had previously been adjusted or paid?

A. In defending against the mandamus proceedings instituted by Mr. Hulburd to pay this judgment——

Q. Were those proceedings instituted prior to the time of which we speak?

A. Yes, sir; Mr. Hulburd referred to that in his testimony.

Objected to because there is no claim or allegation in the pleadings that it has ever been paid or any part of it.

Q. As I was saying, in defending the mandamus proceedings my client, the board of county commissioners, issued certain warrants to pay the judgment. I took the ground that payment by warrant defeated the mandamus proceedings under the statute. On

165 the 11th of December, 1885, they issued three warrants for the payment of the principal and interest of the judgment. I hold copies of these warrants in my hands, made by myself from the original warrant book in the office of the county clerk and recorder of Lake county. One of the warrants is still there—namely, No. 14214, for $15,689.16. The other two warrants—Nos. 14215, for five hundred dollars, and 14216, for $3,272.10—were taken and receipted for by F. M. Hulburd. On the back of these two warrants I have copied the stubs in my own handwriting—the stubs in the warrant book of Lake county, in the clerk's office at Leadville. If I recollect correctly, these warrants subsequently turned up in the hands of one John Alfred, and were dealt with by the board of commissioners and, I think, canceled, Mr. Alfred concluding to rely on the judgment for the payment of the sums mentioned in the warrants, and interest. The two warrants, No. 14215 and 14216, I made out upon blank county warrants from the stubs copied on the back of these county warrants, so that I did not copy these warrants as they appear on the face from the books, because the warrants are not there. I made out the warrants as they are usually made out, and

as, I think, the originals were upon the stub; the others I copied from the original warrant itself—No. 14214.

Q. Now, Mr. Parks, I understand warrant No. 14214, for $15,689.16, was never delivered.

A. No; it has been canceled by the board.

Q. The other two warrants which you mention were delivered, and turned up in the hands of another holder?

A. Yes, sir.

Q. Will you please state, if you know, to whom they were delivered?

A. The copy of the receipt on the back of which showed Mr. Hulburd's signature was copied from the original record, which bears the original handwriting of Mr. Hulburd. I made that
166 myself from the record itself. I think that it is a correct copy.

(Plaintiff here moves to strike out all that portion of the witness's testimony concerning what appears of record and on the back of the supposed copies of warrants, and also all the testimony concerning the issuing of the warrants.)

A. I think, if my recollection serves me correctly, I was present when Mr. Hulburd took the warrants and saw him take them.

Q. You may state, Mr. Parks, what the form and language of the receipt on the stub of warrant 14215 is.

A. "14215. Dec. 11, 1885. Issued to Lucien Baker on ac. of judgment. Received above. E. M. Hulburd, att'y for Lucien Baker. $500.00."

Q. You may state what the warrant and receipt upon the stub of No. 14216 is. Give its language.

A. "No. 14216. Dec. 11, 1885. Issued to Lucien Baker on account of interest on judgment. Received above. Lucien Baker, by E. M. Hulburd, his att'y. $3,272.10."

(Plaintiff objects to the evidence of the witness concerning what is said to appear upon the records of Lake county; also objects to any testimony concerning the delivery of these warrants to E. M. Hulburd, for the reason that there is no authority shown by Hulburd to receive or receipt for Baker's warrants, and that the testimony of the witness concerning these warrants and the delivery thereof is incompetent and immaterial under the issues in this case.)

(Defendants offer in evidence the copies of warrants, with memoranda from stubs, just testified to by Mr. Parks, and mark them "Exhibits 1, 2, and 3.")

Objected to for the reason above stated and for the further reason that they are not the best evidence.

167 Q. Mr. Parks, you were acquainted with the financial condition of Lake county in June, 1886, were you not?

A. I was acquainted with the financial condition of Lake county from the time of my appointment to my resignation, as I stated—during that period.

Q. You may state what, in your judgment, was the value of this judgment as it then stood, in June, 1886, as matters then were in reference to the financial affairs of Lake county.

A. In the hands of Mr. Baker as it stood originally, before the passage of the law of 1887, it was about worthless—could not be enforced. It certainly was of a very small value.

Q. By your answer you confine it to its condition in the hands of Mr. Baker. Assuming that it was in the hands of an innocent holder in June of 1886, before any curative legislation was passed, what, in your judgment, was its value?

A. I would not have invested a thousand dollars in it.

Q. In your opinion, then, was it worth any more than a thousand dollars?

A. I think not.

Q. In Mr. Higgenbotham's testimony, taken in this case, he states that he met you at the Windsor hotel, in the city of Denver, about seven o'clock in the evening of the 9th day of June, 1886, and that the conversation between yourself and him on the subject of the Lucien Baker judgment this language was used: "I (referring to Mr. Higgenbotham) asked him (referring to yourself, Mr. Parks) what amount of funds were on hand in the office. He said there was something, I think, near about nine thousand dollars—something like nine thousand dollars—on hand, and that the amount was all the time accumulating and the county was in a good fix. It had throwed off a great portion of its indebtedness and could now pay these judgments." Did you or did you not have any such conversation with Mr. Higgenbotham?

A. No, sir. If I had I should have known better. It could
168 not have been true. The bonds then outstanding, with accrued interest and all, amounted to near three-quarters of a million dollars at the time referred to, and I knew the county did not intend to pay them.

Q. Mr. Higgenbotham testifies in reference to that conversation also in the following language:

"Q. What did you say to him, if anything, at that time about the assignment?

A. I told him that it was assigned on his recommendation, as I understood, for the purposes of collection."

You may state whether or not any such conversation as that took place between yourself and Mr. Higgenbotham.

A. No recollection of any such conversation, and quite sure it never took place.

Q. Did you at that time or at any time prior to the institution of this suit have knowledge from Mr. Higgenbotham or others that the assignment to Mr. Hulburd was made merely for the purposes of collection?

A. No, sir.

Q. Mr. Higgenbotham further testifies that in the same conversation he made certain statements to you, which he puts in the following language:

"I told him (meaning yourself) that if he had any doubt about

that, I says, I have got a paper with me in which Hulburd acknowledges that Baker is the owner and controller of this judgment, but it is merely assigned to Hulburd for the business of collection purposes, and, says I, I will show it to you. He said it was not necessary. I had considerable talk with him. I believe that this is the purport of it."

State whether or not any conversation of that purport or substance occurred between yourself and Mr. Higgenbotham.

A. Wholly and absolutely false.

Q. You had no such conversation?

A. No such conversation.

Q. Speaking of this assignment to Mr. Hulburd, Mr. Higgenbotham testifies in answer to questions as follows:

"Q. Did you have a talk with him (meaning you, Parks)—anything about this matter of who had possession of the original assignment?

A. Yes; I asked him—I says, Hulburd wrote me you had forwarded that to him when he was down here, but have sent it to
169 the wrong hotel, to the Windsor, and he was stopping at the Markham, and that he did not get it, and that was the reason he could not forward it to me by mail. Yes, says he, I sent it addressed to Hulburd at the Windsor. I told Parks I had called at the Windsor and had the clerk run over the letters there, but he could not find it there; could not find any such letter to Hulburd or any letter to Hulburd, and did not recollect of having sent it back. Parks said, I suppose he forgot it, but it was sent there.

Q. Who said that?

A. Parks says, I suppose the clerk forgot, and had forwarded it back to Hulburd, who has got it by this time.

Q. What day was this? Do you know whether it was the 9th or 10th?

A. This conversation was the evening of the 9th; that is my recollection."

You may state, Mr. Parks, whether or not any such conversation took place between yourself and Mr. Higgenbotham in reference to this assignment.

A. No recollection of any such conversation. I will state, as a matter of fact, that when Mr. Hulburd got his assignment from Baker to him fixed up in accord with what he knew the county would recognize through me—got it executed from Baker to himself, and, as I supposed, to make sure that he was proceeding in accord with the judgment of those representing the county—he sent the assignment to me at Leadville by letter, for me to pass on it as attorney of the county. He was stopping here in Denver, my recollection is, at one of the hotels. I think it was the Windsor. His letter was written from the Windsor, I think, which enclosed the assignment. I examined it, thought it was sufficient to justify the county in recognizing the acts of the assignee, and returned it to him in a letter, and I think I returned it to him at the Windsor hotel, in Denver.

Q. Mr. Higgenbotham, on page 14 of his testimony, further testifies to conversation between himself and you in these words: "Well, I told him that I had become uneasy about Hulburd's gambling, and that I wanted to get this out of his hands just as soon as I could. Says I, I am not afraid of his honesty; he has always proved honest, but a gambler cannot be trusted, and he might trade it or put it out of his hands to raise some money while gambling, and I had rather have it back just as quick as I can get it. I had written there repeatedly to him, and he replies it is not in
170 his hands, and it has gone backwards and forwards from Leadville to Denver by mail, and if before I get this from Hulburd he undertakes to dispose of it in any manner, why you can state. They would most likely inquire of you, being the county attorney and acquainted with the value of such a paper and having been the attorney in the case—they will most likely enquire of you as to its value and you can state to them that Hulburd is not the owner, but that it was assigned to him by Lucien Baker merely for collection purposes and belongs to Lucien Baker. He said he would do that."

Did any such conversation occur?

A. No; unqualifiedly no.

Q. He further testifies in the same connection in answer to questions as follows:

"Q. Did he say anything about notifying you?

A. Oh, yes; he said he would notify you. I told him to telegraph me at once if he heard of any attempt of Hulburd's to do anything with that paper; heard of Hulburd's doing anything with that paper before I could get it away from him."

Did any such conversation occur between you?

A. I was under no obligation to perform any such service for him or anybody else and never undertook any such obligation and had no such conversation.

Q. Did you agree to notify him if you heard of such action?

A. No, sir.

Q. Did he request you to do so?

A. Don't recollect any such conversation; no reason why I should undertake any such obligation; none of my business; I couldn't serve two masters. I was representing the county and would not have agreed to represent him.

Q. Mr. Higgenbotham further testifies to a conversation at the corner of Arapahoe and Sixteenth streets without definitely stating the time, but he thinks it was about two months before Hulburd applied to him for the assignment of the judgment; says he had a conversation with yourself and N. P. Seeley at that place in reference to the value of the Baker judgment, and, among other things, he testifies to your making this statement, using the follow-
171 ing language: "He (Parks) said, however, if Lucien Baker would take fifty cents to the dollar—he asked me how much it amounted to. I told him about twenty thousand dollars. Well, he said, if Lucien Baker will take ten thousand dollars for it I will try and get the county board to pay it."

State whether or not you had such conversation as that with Mr. Higgenbotham at the corner of Arapahoe and Sixteenth streets in Denver.

A. No, sir.

Q. He further testifies in this connection as follows: "I told him I didn't think Baker would discount the value heavily to get the cash; he could wait; it was drawing ten per cent. interest. Well, says he, you can write him that—that if he will take ten thousand dollars for that I think I can get it paid." Did you or did you not make any such statement to Mr. Higgenbotham?

A. No, sir.

Q. Mr. Higgenbotham further testifies as follows at page 19 of his evidence: "When I was in Leadville, about the 15th or 16th of June, I tried to see Parks again and have a talk with him about the matter. He wouldn't talk with me at all; turned off and said, says he, 'I have not time,' and left me rather abruptly." State what recollection you have of any such conversation.

A. Have no recollection of any such conversation; it is possible that he may have met me on the street somewhere and I was busy with county affairs—was generally. I have no recollection of it. He, like other creditors of the county, was prospecting around continually to see what accommodation they could make of their indebtedness against the county at the time he refers to; generally came to me representing the county.

"Q. Did Seeley remain there some time; and, if so, about how long?

A. Yes; Seeley was there during the week; I think he was there during that week from that time on. This was the 15th, on Tuesday, I guess, and he stayed there until Saturday, I believe—maybe longer; I don't know—and it was assigned on the 17th to S. N. Wood. I didn't know anything about it at the time, and after this assignment I then got a chance to talk with Parks; he came to Mr. Hulburd's office to see him and I was there and I talked with him, and he again stated that if he saw any attempt of Hulburd's to put this our of his hands he could let me know."

Did any such conversation occur?

172 A. No such conversation.

Q. Mr. Parks, when did the fact of an assignment from Hulburd to Wood first come to your knowledge and under what circumstances?

A. I don't recollect the date. I was coming to Denver. Mr. Seeley was at Leadville, and, knowing that I was coming to Denver to attend to county matters, he asked me to file a paper which he produced and handed to me. The paper was an assignment of the Baker judgment in the United States court, Denver. He delivered to me the paper. I looked at it and said I would file it. I came to Denver and filed it while I was here; took it up to the clerk's office and filed it in the case. At that time, if my recollection serves me right, the fact of the assignment and disposition of the judgment prompted me to look into all the judgments against the county, and I think I procured an abstract from the clerk of the

court of all the judgments against the county, including this Baker judgment, as they showed up to that time; took them with me to Lake county and filed them among the proceedings of the board. I was interested to know of these matters, because I was attorney of the county and was relied upon to keep track of them and I did so.

Q. You may state what part, if anything, you had to do in the procuring of the assignment of the judgment from Hulburd to Wood, or what part, if any, you took in the negotiation relating to it.

A. I have stated the part I took, being consulted by Mr. Hulburd, as stated, in reference to the form of assignment, etc.

Q. Was that your only connection with that assignment?

A. I think so, except as to filing the paper for Mr. Seeley; I think so.

Q. You may state whether or not you were in any way the representative of Mr. Wood or of Mr. Seeley in that transaction.

A. No, sir; I was nor, except as stated.

173 Q. State whether or not either of these gentlemen requested you or called upon you in any manner to act for them in any purchase of that judgment or any matter relating to it.

A. No, sir; no recollection of such a thing; was not the proper thing for me to do; wouldn't have done it if they had asked me.

Q. In Mr. Thomas H. Baker's testimony in this case, Mr. Parks, he was asked as to his having at any time had a conversation with you about the judgment or the assignment of it, and he testified in answer thereto as follows:

"Yes, sir; after Mr. Hulburd had left the place for parts unknown. I met Mr. Parks at the post office one day, and I says to him, after knowing all the circumstances and being connected with them—I said, I rather doubt whether Hulburd ever received twenty-five hundred dollars from Mr. Wood, the cashier of the First National Bank of Denver. He (Parks) said, Yes; he did. I was present at the time the transaction was made and saw him pay the money."

Will you please state the facts in reference to this conversation and what the circumstances were, if any conversation took place?

A. I don't recollect any conversation with Baker on the subject or any such conversation. I could not have stated to him the purported fact that I saw the money paid, because as a matter of fact I never saw *saw* any money paid by Mr. Seeley or Mr. Wood, and if I had stated that I would have stated falsely. No such conversation occurred, to my recollection. I desire to state in connection with this answer, which is not called out by the question, that Mr. T. H. Baker has been associated to some extent with Higgenbotham and Barnes in their business.

Objected to by plaintiff's counsel.

Thereupon the witness withdraws the statement.

Q. You may state what you know of Mr. T. H. Baker's relation to the plaintiff in this suit or to A. A. Higgenbotham.

Objected to as immaterial.

174 A. For a number of years past Mr. T. H. Baker has been to some extent associated in some manner with Higgenbotham and Barnes, and if I recollect rightly I think he has been representing in Leadville until recently Mr. Lucien Baker and Mr. Barnes in reference to some real estate in Leadville in which Baker had his office. He has plied me with a good many questions in reference to this transaction in Leadville and elsewhere and satisfied me that he had an object in catechising me which was connected with the interest of the plaintiff.

By the consent of counsel further taking of testimony is continued until Saturday, the 26th day of April, 1890, at 10 o'clock a. m., at my office, in the city of Denver.

JOHN W. WEBSTER,
Examiner in Chancery.

Pursuant to the foregoing continuance, this Saturday, the 26th day of April, A. D. 1890, at the hour of 10.30 o'clock a. m., counsel for the respective parties being present, the examination of Mr. D. E. PARKS was continued as follows:

(Continued direct examination by Mr. VAILE:)

Q. I find in examining the evidence of F. M. Reardon given in this case that he testifies to a conversation with you in reference to the judgment or some judgment which Mr. Hulburd appeared to be controlling, and, among other things, he testifies as follows as to such conversation:

"There was some talk about having the judgment transferred, and Mr. Parks came up into the office and wanted us to look up the authority of this man Hulburd to transfer it. I hunted it up and found it for him—found the power of attorney for him. I told him in the course of the conversation that I did not think it was hardly a square deal, knowing the man's reputation, to transfer them, and I would advise him on behalf of the county to be a
175 little cautious, and Parks said he didn't care about that as long as the power of attorney was there giving authority to transfer it."

I will ask you to state what you know of such a conversation and what the conversation was about, if there was one.

A. I think Mr. Reardon in that testimony refers to a power of attorney from Higgenbotham and Barnes to Mr. Hulburd, which is of record in Lake county, and to a transaction in which they were interested, which I don't recollect particularly—that is, as to what the subject of the transaction was—but if my memory serves me right it was a claim they had against the county, which somehow, I think, was merged into a judgment in the district court, if my memory serves me right, of Lake county. If I recollect correctly Mr.

Hulburd was doing something with that matter, or if it was not it was a claim they had before the board of county commissioners against the county for something—I don't recollect what—that he was looking after the payment of. The transaction involved, I think, the authority of Mr. Hulburd to deal with that matter and to receive county warrants in payment of it and receipt for it. I won't be positive, but I am inclined to think it was a judgment, and that warrants were asked to pay the judgment. If I had time I could look up the records of the county commissioners of the county and the county clerk's office records and state to a certainty. I haven't thought of it since until my attention was called to it by this testimony, and I am not positive about it. At all events, the question was one of authority of Mr. Hulburd to deal with the subject, and the power of attorney which he had—I think he produced it—was looked into by me as attorney of the county to see if he had authority to deal with the matter as he claimed. My recollection is that I went to the clerk's office and Mr. Reardon and I looked it over
176 together—that is to say, while I was looking over the record of the power of attorney Mr. Reardon was there and put his say in, as he usually did. I don't recollect his saying to me in that transaction that he did not think it was hardly a square deal, knowing the man's reputation, to transfer them. It is barely possible that he might have said what he says he did—that he would advise me on behalf of the county to be a little cautious. If he did, I probably made some such answer. I recognized my responsibility for the management of the transaction in the interests of the county. Mr. Reardon often volunteered his advice when it was not sought.

Q. You may state whether any such conversation as here related by Mr. Reardon occurred in reference to the Baker judgment being transferred by Hulburd to Mr. Wood.

—. I think not, unless it was some such conversation as this, which I don't pretend to recollect distinctly, but the substance of it is that after this judgment was assigned to Mr. Wood and he claimed to own it he in some way, I don't recollect now how, began negotiations with the board of commissioners to levy a tax in settlement of the judgment.

(Mr. REED:)

Q. Who did?

A. Mr. Wood, I think, or somebody for him.

A. (contin'd). A proposition of some kind was made to the board; my recollection is an understanding was finally arrived at between Mr. Wood and the board of commissioners by which a quarter of the face of the judgment was sacrificed, thrown off, if they would levy a tax. As a matter of course, the subject came to my knowledge and possibly was referred to me by the board for treatment by them. About this time and during this negotiation Mr. Reardon, according to my recollection, had something to say to me about it.
177 What the phraseology of his talk was I don't recollect, but the substance of it was that some notice had been served on

him by Mr. Reed here, the attorney of Baker; some talk had been made by Mr. Reed to some members of the board about the claimed rights of Baker, and I think it is possible, perhaps he did, caution me in some way—I think he did—as to the responsibility of the county and to exercise caution, etc., with regard to the responsibility of the county; that is all.

Q. The matter you have just stated was subsequent to the assignment of the judgment, however; about the time of the first levy. Q. My question was as to whether at the time or prior to the assignment by Hulburd to Wood any such conversation took place in reference to that assignment.

A. No; I think not; I don't recollect anything of the kind. I think that is the conversation that occurred that I have detailed and that Mr. Reardon refers to.

Q. From the assignment which you yourself saw afterwards you know, don't you, as a matter of fact, that it was not made through a power of attorney?

A. As a matter of fact, I know that it was made by Mr. Hulburd, who claimed to hold the title of the judgment by an assignment and transfer directly from Mr. Baker, the judgment creditor.

(Witness is handed the testimony of Mr. Bishop.)

Q. If you know of any other matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them or that is material to the subject of your examination you may state the same.

A. In Mr. Bishop's testimony he speaks of an endorsement in these words: D. E. Parks, attorney for defendant, being endorsed on the assignment which Mr. Seeley sent by me to Mr. Bishop as clerk. If such is the fact, the endorsement was made by some one besides myself, as, according to my recollection, there was no
178 such endorsement upon it when I delivered it to Mr. Bishop, and I think an examination of the original paper will show that the endorsement is in the handwriting *to* some one in the clerk's office, probably Captain Tuppers.

I wish to say that if my recollection serves me right there was a discussion among some of the members of the board of commissioners after the decision of the supreme court of Colorado—the first decision rendered by Judge Elbert—as to the ability of the county to avoid that Baker judgment by attacking the validity of the warrants upon which it was rendered, it being their opinion that most of the warrants, not all of them, were unconstitutional and the judgment might be avoided for that reason. They seemed to have carried a half-formed purpose in their minds from time to time to attack that judgment on that ground. Some of the commissioners were inclined to instruct me to do it, but they never did instruct me, and I think the status of their minds on that subject was one element that entered into my mind as to its value. I thought that the judgment could not be successfully attacked. That was my opinion. Nevertheless they seemed to have a purpose to attack it, and carried it in their minds. I have heard of a case decided in

Judge Hallett's court in reference to Rio Grande county where some warrants were issued in payment of judgments and a suit brought upon the warrants, and then he held that possibly it might be done. Of course that decision is recent and did not affect my mind at that time. I had the point in my mind, however.

(Mr. REED:)

Q. They got over that notion before they commenced to make the levy to pay seventy-five per cent. of the judgment?

179 A. Well, they knew my opinion about it, and in view of my opinion they concluded to compromise the matter in some way and did, knocking off twenty-five per cent. of it, saving the county that much.

(Cross-examination by Mr. REED:)

Q. How long were you attorney for the county?

A. Well, I was attorney for the county of Lake on two occasions.

Q. The last time?

A. From the 23rd day of April, 1883, until the 1st day of January, 1890, when I resigned. I resigned a short time before that time, but my resignation took effect the first day of January, 1890.

Q. You say in your testimony that you undertook to manage the affairs of the county?

A. I mean legal affairs, in consultation with the board of county commissioners.

Q. Or a guide to the commissioners in their legal matters?

A. I acted as their legal adviser. All questions of policy were passed upon by the board.

Q. That is, any policy that they would pursue in reference to their indebtedness and that sort of thing?

A. Well, they overruled me sometimes—that is to say——

Q. All you had to do about it, I understand you to say, was to attend to their legal business?

A. Yes; and consult with them about the management of the affairs of the county.

Q. Then when you were consulting with Hulburd about this assignment and the sufficiency of it you were acting as the legal adviser of the county, were you?

A. Certainly.

Q. Well, what difference did it make to the county whether that assignment was good for anything or not? Wasn't it a matter entirely between the assignor and assignee?

180 A. From a legal standpoint it might be so, but the county, as I stated, refused to pay that judgment. An assignment, of course, had to be in proper form or it would not be recognized.

Q. Did it make any difference to the attorney of the county whether it was recognized or not?

A. It made that difference——

Q. Will you tell me, as a legal adviser of the county or as a lawyer,

what difference it made to the county whether the assignment from Baker to Wood was good or bad?

A. The difference that unless the transfer was legal and properly made they would not recognize it. It would not be recognized by me, and the further difference that if the transfer was not valid and they recognized it they might have to pay two instead of one.

Q. Then you, on that theory, took pains to see that this was properly transferred from Baker to Wood, did you?

A. I always took the responsibility of dictating, so far as I was able, as to what procedure should be recognized in the litigation against the county by which the county would be required to incur or discharge any responsibility whatever.

Q. You got up this assignment along the first of May, did you not?

A. No; I didn't get up the assignment.

Q. Well, by saying how it should be made?

A. Not in that sense; I didn't get up the assignment. Mr. Hulburd had the assignment fixed up and put it, I suppose, in the form suggested.

Q. But you state he exhibited it to you?

A. Sought my advice as to the form that would be sufficient to authorize the county to act.

Q. You directed the form?

A. I didn't direct anything; I suggested, and I suppose he acted on the suggestion.

Q. Suggested; yes.

A. I suggested, and gave him to understand that unless the form was satisfactory it would not pass muster; just as I would do with you in a similar case.

181 Q. Well, another thing you have stated in your direct examination, that that judgment could not be collected against the county. What made you say that?

A. I said that the status of the judgment was such that collection could not be enforced.

Q. But if it——

A. For the reason that an effort had been made to enforce it and failed through the county's defence.

Q. That is no reason why another effort could not be made?

A. Unless the status of the law was changed, it would not have been enforced, in my judgment, to this day—the legislation I mean——

Q. Then, as a lawyer, are you satisfied that they could not have brought another mandamus proceeding?

A. They could have brought another mandamus suit, and I think they did bring two, and they made the effort until they were satisfied that they could not succeed in the United States court, the law of that court being that, in the case of Supervisors against the United States, reported in 18 Wallace, if my recollection serves me right, the power was not conferred on the board of commissioners so as to compel payment by levy without an express statute clearly conferring it, so I think that case decides.

Q. Then, if it had been owned by some other person who was not obnoxious to the board of county commissioners or was assigned to some other person it would have been paid, you think, by the county?

A. I don't know as to that.

Q. That was the purpose for which Hulburd was procuring the assignment, wasn't it—to get it into the hands of some pleasant people?

A. I am of the opinion that it would have — settled if Hulburd owned it.

Q. You were of that opinion then?

A. Yes.

Q. And that was the alleged purpose of Hulburd's getting
182 the assignment, wasn't it?

A. What do you mean by alleged purpose?

Q. The purpose that Hulburd represented to you as being his purpose.

—. That is the way I understood it.

Q. Then, you didn't know that Hulburd's purpose was at that time to appropriate the money to his own use?

A. No, sir.

Q. Then, if that judgment would have been, as you think, settled by the county commissioners in the hands of Hulburd, what makes you say that it was worth but a thousand dollars?

A. Well, apart from Hulburd, the assignee would have to take his chances on securing his payment, and he had no certainty, under the legislation of Colorado and the decision of the United States courts, in my opinion, of enforcing collection.

Q. You think there was some change in the law of 1887 you spoke of?

A. Yes; there was a bill passed in 1887 authorizing the board to levy fifteen mills, in their discretion, to pay judgments.

Q. That was the law referred to in the case of May *vs.* Seeley?

A. No, sir; subsequent to that decision.

Q. What statute of 1887 do you refer to? (Witness is handed Laws of 1887.)

A. The act under the title of county government, page 240 of the Laws of 1887, section one (hands book to Mr. Reed), which gives the board of commissioners power to levy fifteen mills as a tax to pay judgments. Before the passage of that act and under the General Statutes of 1883 and the Law of 1885 they had power to levy fifteen mills—ten mills for ordinary county fund, five mills for special contingent fund.

Q. You say this statute was not referred to in the case of May against Seeley?

A. I don't see how it could be, as it was passed in 1887.

183 Q. Don't you know that that was held unconstitutional in almost every particular in the case of May against Seeley—this statute?

A. No, sir. You don't mean May against Seeley; you mean People on relation of Seeley against May, treasurer, &c.

Q. Is the passage of that statute the reason or the principal reason why Lake county warrants and indebtedness generally were of more value?

A. I think so. That is one of the reasons.

Q. Is this the principal reason?

A. No; I don't know as it is.

Q. Isn't it a fact?

A. That is one of the reasons why judgments are more valuable.

Q. Isn't it a fact that you, as the attorney of the county, had succeeded in defeating and having held by the courts void a large portion of the indebtedness of Lake county prior to this assignment?

A. I am not prepared to say that it is entirely due to that.

Q. I am not asking you what it is due to.

(Question re-read.)

A. Yes; that is a fact as to a portion of the debt.

Q. Didn't that have more to do with increasing the value of Lake county indebtedness than anything else?

A. I can't say that it did. I think the reformation of the legislation of Colorado in 1885, 1887, and 1889 in reference to county government in said matters—the legislation increased the power of the board of county commissioners and made certain limitations, made a firmer and better system of county government. The outstanding indebtedness creditors were seeking to enforce by litigation, if enforced against the county, would have been enforced by litigation, by judgments of courts of competent jurisdiction, would
184 have merged the debt represented by the judgment, and the debt would have been treated as judgments, and if paid at all would have been probably by levying a tax to pay it. The judgments themselves, as I think, could not have interfered with the revenue of the current administration of county affairs.

Q. By this litigation how much indebtedness of the county of Lake was in effect canceled?

A. Really by the cases of Rollins against Lake county and Graham against Lake county, which involved between fifty and sixty thousand dollars, — was disposed of, and only disposed of; but the precedents of these cases, established by the judgments of the Supreme Court of the United States, and that of the case of People on relation of Seeley against May, in the Colorado supreme court, fixed the meaning of section 6 of article 11 of the constitution of Colorado as a general limitation upon the power of counties to contract indebtedness, and as applied to the outstanding debt of Lake county, outside of the actual debt in the suits named, invalidated, I estimate, over a million dollars indebtedness of Lake county. As a matter of fact, the validity of that debt, aside from the debt involved in these suits, is still unadjudicated—the validity of a portion of which is still pending in litigation against the county.

Q. Is it not a fact that the decisions of the courts to which you refer operated to advance the price of Lake county securities immediately upon the decision being made?

A. The decisions of the supreme court of Colorado, reported in

the 9th Colorado, 80, 404, 415, had the effect to appreciate in some degree—how much I am unable to estimate—the credit of the county. The suits of Rollins against the county and Graham against the county were begun in the United States court, I think, early in 1887,
and an appeal thus made by the creditors to the national
185 judicial tribunals, with the expectation that the judgment of the supreme court of Colorado would not obtain in the United States courts. These cases were submitted to the decision of the Supreme Court of the United States, I think, the second day of January, 1889, and a decision was rendered in them about the 13th day of May, 1889. The decision of the circuit court of the United States, rendered by Judge Brewer, circuit judge, was against the county. Judgments were rendered there, in the Graham case, for over $7,000, on the coupons to the bonds of the county, and in the Rollins case about $40,000, on warrants of the county. The county took the cases to the United States Supreme Court by writs of error. While the litigation in U. S. courts was pending, and especially after Judge Brewer's decision, the public faith in the credit of Lake county waned considerably, and until the decision of the United States Supreme Court in these cases the full force and effect of the maintenance of the position of the county was not realized.

Q. Then the fact is that after the decision of our supreme court and after the decision of Judge Brewer the value of warrants and securities generally decreased until the time of the decision reversing Judge Brewer in the United States Supreme Court?

A. I don't say that.

Q. What is the fact? Isn't it a fact that after the decision in the supreme court of Colorado the securities of Lake county advanced materially, and then they fell in value at the time of Brewer's decision?

A. I can't say that either; I don't deal in county warrants.

Q. You don't know anything about it?

A. I was not dealing in county warrants. I have had some opinion about it. I think after the decision of the United
186 States Supreme Court—what do you mean by securities?

Q. I mean every form of county indebtedness.

A. The outstanding indebtedness that I have referred to as consisting of more than a million dollars did not advance in value. The lawful indebtedness of the county represented by county warrants, I think, were held in higher estimation. I think I sold mine for more than I was in the habit of getting for them.

Q. You frequently stated, didn't you, after the decision of *of* the supreme court of Colorado invalidating a large portion of the indebtedness, that Lake county was in good shape so far as its indebtedness was concerned?

A. Well, that question is a sweeping one; that includes all indebtedness, legal and illegal, and, if it means that, I never said any such thing.

Q. It doesn't mean that. It means the valid indebtedness according to the decision of that court.

A. The decision of the court did nor discriminate as to what was

valid or invalid. It simply laid down a rule only as to the warrant before the court—a fifteen-dollar warrant—laid down a rule of construction of the constitution which had to be applied to all debts by proper action to invalidate them.

Q. You stated in your direct examination that this judgment in the hands of Lucien Baker was worthless—in the hands of an innocent purchaser was worth a thousand dollars. Now, what do you mean by that statement?

A. I said that I would not give as an investment—I would not have invested a thousand dollars in it; probably was not worth more than one thousand dollars.

Q. You did not mean to swear, then, that that judgment was not worth but a thousand dollars in the hands of an innocent party or a party that was not obnoxious to the commissioners. I
187 am not asking you what you would give for it, but the value of it.

A. I would not give for it——

Q. I am not asking you about what you would give for it. You know, as a lawyer, that is not any estimate of the value of the warrant what you would give for it. I am asking you about the value of it.

A. I was not dealing in judgments of Lake county, and am not an expert as to values.

Q. Then you don't know the value of it?

A. I am only speaking of my own knowledge as far as it goes. My estimate of its value, if it had any, is placed and was placed upon the status of it at that time. If you could not enforce the payment of it without additional legislation, it strikes me that it had not much value. That is the basis of my estimation of its value.

Q. Then you can't swear as to the value of that judgment considered with reference to the ability of Lake county to pay it?

A. Well, as I said before, the revenues of the county were required and are now required, I think—the entire revenue of fifteen mills—to run and pay the current expenses of that county; and, unless the board of commissioners had other and further power to pay judgments, this judgment being in the United States court, the payment of it could not be enforced from that status of the judgment, and upon that status I base my estimation of its value. The ability of Lake county to pay debts is limited by its power to levy taxes, and upon that ability I base my estimate of the value of the judgment.

Q. I desire a direct answer to the question I asked you last preceding.

(Question re-read.)

A. I say that, in my judgment, considering that ability, that judgment was not worth more than a thousand dollars, if it was that, in ordinary hands.

Q. I believe you stated that you approved the form of the assignment from Hulburd to Wood on account of your position as

188 county attorney, and solely with reference to the interests of the county?

A. Your belief is altogether erroneous. I did not intend to be so understood. The assignment from Baker to Hulburd was sent up to me. I sent it back again. I suggested a form of assignment to Mr. Hulburd.

Q. For Wood?

A. I don't think I did specially. I don't recollect about that. My recollection is that—what did I say in my direct examination there? (Testimony read.) *A.* That doesn't state I saw any assignment, or that he submitted any assignment to me designed for Wood.

Q. Did you see this assignment after Hulburd drew it?

A. I don't think so. He might possibly have shown me a form in blank.

Q. Do you know whether you did or not?

A. That is my judgment about it, that I don't think I did. Of course I saw it when Seeley handed it to me after that.

Q. But before Seeley paid the money did you see it?

A. I don't think I did.

Q. Did Mr. Seeley say anything to you about it; if so, what was it?

Objected to because it is not cross-examination, no conversation with Mr. Seeley having been brought out in the examination-in-chief, and because Mr. Seeley is now deceased.

A. I don't recollect that Mr. Seeley said anything to me about it. I don't recollect whether he did or not. Possibly he might have inquired into the status of the judgment for the purpose of knowing what its status was in reference to the county; don't recollect that he did, however.

Q. Concerning the form of assignment or the manner in which it was made out to Mr. Wood, did Seeley ask you anything about that?

189 A. Think not; don't recollect any such thing.

Q. You state that you did not see this assignment delivered or the money paid in the Tabor Grand hotel; were you present when Mr. Hulburd and Mr. Seeley talked about it or did anything in connection with it at any other place than the Tabor Grand hotel?

A. Don't recollect that I was.

Q. Do you remember of Mr. Hulburd's giving Mr. Seeley a draft or check or any paper with the assignment?

A. I do not.

Q. Do you remember of Seeley's giving Hulburd any draft or check?

A. No.

Q. Did you hear any conversation between them at all?

A. I don't recollect of any.

Q. What talk, if any, did you have with Mr. Wood about it?

A. I don't remember any talk with Mr. Wood about it. He may have inquired about it, as I stated; I don't recollect; don't pretend

to carry these things in my mind. It is possible that he may have inquired of me about the fact of the judgment—something about it; I don't recollect his saying anything about it.

Q. That would have been in Denver if he did?

A. Probably; would have been in Leadville if he had been there.

Q. You didn't see Mr. Wood in Leadville about that time?

A. Don't recollect that I did.

Q. You did see him here quite frequently?

A. Saw him among the people of the town, on the street, and elsewhere frequently.

Q. And you can't recollect now whether you talked with Mr. Wood about this judgment or about Hulburd's selling it at any time or at any place?

Objected to because it is not cross-examination and is an attempt under cover of cross-examination to make Mr. Parks a witness for the plaintiff.

190 A. No recollection of it. As I said before, it is possible that Mr. Wood may have interrogated me about it, casually meeting me on the street or elsewhere; don't recollect any such thing.

Q. You stated in your direct examination that you didn't have the conversation attributed to you by Mr. Higgenbotham in the Windsor hotel in his testimony?

A. What conversation do you refer to?

Q. The conversation that you testified about with Mr. Higgenbotham.

A. A good deal of conversation was called to my attention.

Q. The conversation that I particularly refer to is the conversation by Mr. Higgenbotham stated to have been on the 9th of June, 1886, in the evening of that day, about seven o'clock. He stated that he had a conversation with you in the Windsor hotel. Now, you say that you did not have the conversation and did not make the statements there that he says you did. Now, then, I want to have you state what conversation you did have with him there at that time.

A. I state now, as I stated before, I recollect no such conversation, and certain parts of that supposed conversation detailed by him was called to my attention. My answer is the same as before to the several parts that were called to my attention. You don't specify any particular portion of it.

Q. Did you have a conversation with him at or about that time in the Windsor hotel?

A. I don't recollect any such thing.

Q. You don't remember seeing him there at all?

A. No, sir.

Q. Do you remember of (I suggest this for the purpose of refreshing your memory) sitting with him on one of the sofas there in the Windsor hotel, being in conversation with him, and Mr. Breene coming up and speaking to you and taking you to one side for a few

minutes and talking with you about political matters in
191 Lake county, and then going back and resuming the conversation with Mr. Higgenbotham?

A. No.

Q. You don't remember that?

A. No, sir.

Q. Can you swear that you didn't have a conversation with him there at or about that time?

A. No; I can't. I was around the Windsor hotel considerably; think I used to stop there occasionally. I think it is quite possible that I may have been sitting there, and Mr. Higgenbotham may have been sitting somewhere near, but I don't recol-ect it. I don't recollect Breene's coming up there.

Q. Do you recollect of talking with Mr. Higgenbotham about the judgment there in the Windsor?

A. No.

Q. Can you swear you didn't talk with him about that judgment there in the Windsor?

A. To the best of my belief I didn't; still, such a multitudinous number of Lake county matters on my mind, I won't be positive about it.

Q. You stated in your direct examinatien that you not only did not undertake to notify Mr. Higgenbotham in case Hulburd undertook to dispose of that judgment, but that you would not do that as attorney for the county—did not have any business?

A. I don't think I said that.

Q. Or words to that effect.

A. I don't think I said that; read my testimony and call my attention to it.

Q. (Reading testimony:) "Mr. Higgenbotham says in answer to question as follows: '*A.* Did he say anything about notifying you?'"—that is, concerning Hulburd's disposition of the judgment. "'Oh, yes; he said he would notify me. I told him to telegraph me at once if he heard of any attempt of Hulburd's to do anything with that paper; heard of Hulburd doing anything with that paper before I could get it away from him.' Did any such conversation occur? A. I was under no obligation to perform any such service for him or anybody else, and never undertook such obligation. Q. Did you agree to notify him if you heard of such action? A. No, sir. Q. Did he request you to do so? A. Don't recollect any such conversation; no reason why I should undertake any such obligation;
192 none of my business; couldn't serve two masters; I was representing the county." Do you remember having any talk with him about Hulburd's attempt to dispose of it?

A. No.

Q. Do you simply not remember that or do you say that you did not have any such talk about Hulburd's attempt to dispose of it?

A. I say that I did not, to my knowledge.

Q. What do you mean when you say, "No reason why I should undertake any such obligation; none of my business; I couldn't serve two masters; I was representing the county"? Do you mean

to say that, consistently with your duty to the county, you could not notify Mr. Higgenbotham if Hulburd tried to dispose of that judgment?

A. I mean to say that I could not serve any judgment or other creditor in any way, shape, or manner, and refused to do it, as you know.

Q. Do you consider as a question of professional ethics that you could not consistently notify Mr. Higgenbotham if Mr. Hulburd was attempting to dispose of that judgment?

A. I consider that the position taken in Higgenbotham's testimony is absurd; that I would not in any instance have undertaken anything in behalf of his claims against the county; not even that, and from my standpoint that would not have been legit-mate for me to do, as the board was opposed to treating with him.

Q. Do you think it is any more absurd to ask you to do that favor for him than it would be for you to refuse it?

A. Yes, sir; I do. I imagine he always had a pique in his mind against me as acting for the county because I had prevented the collection of that judgment in the courts, and I always thought he carried himself in a way that showed he was not friendly towards me.

Q. You say that you did not have the conversation he attributes to you in Hulburd's office, in Leadville. Did you have any
193 conversation with him in Hulburd's office, at Leadville?

A. None that I recollect of.

Q. Did you talk with Mr. Seeley in Denver, before he went up to Leadville, concerning the assignment of this judgment?

Objected to as not being cross-examination.

A. I don't recollect of having talked with Mr. Seeley. I think Mr. Seeley says in his testimony that he was in California about that time; and if my recollection serves me right he came back by way of Leadville; but I may be mistaken about that; don't pretend to carry these things in my mind.

Q. Did you have any conversation with Rollins or Young about the purchase of that judgment?

Objected to as being irrelevant and immaterial and not cross-examination, Rollins and Young not being parties to this proceeding in any way.

A. No recollection of any conversation.

Q. You are in the employ of Rollins & Young now?

A. I do some business for the Rollins Investment Company.

Q. You are employed by them on a salary?

Objected to as being immaterial and irrelevant.

A. I am employed by the Rollins Investment Company.

Q. You know that Rollins & Young are interested in this judgment, don't you?

A. I can't say that I do.

Q. Don't you know that the purchase was made on their behalf as well as Wood's?

A. I can't say that I do; not of my own knowledge; may by Seeley's testimony; I have read that.

Q. Don't you know by the statement of Frank Young or any of the firm?

Objected to as asking for hearsay testimony and not cross-examination.

194 A. I can't say that I do.

Q. You say that you were attorney for the county in the mandamus proceedings to enforce collection of this judgment, and that the county commissioners issued certain warrants to pay the judgment; that you took the ground that payment by warrant defeated the mandamus proceeding under the statute, and that on the 11th day of December, 1885, they issued three warrants for the payment of the principal and interest of the judgment. Now, will you state whether you ever in these mandamus proceedings pleaded the payment of the judgment as a part of your defence?

A. I think I did. I would have to see the papers before I could say positively.

Q. Did you offer these warrants in evidence in the mandamus proceeding?

A. No; I think a demurrer was made to the answer, and it was sustained to that defence.

Q. Then these warrants were never offered or tendered in a formal manner to the plaintiff or his agent, Mr. Higgenbotham?

A. No; I think not, except by the allowance and draft of the warrants. They were there and Hulburd knew they were there and took part of them, and except by his taking such part.

Q. Concerning the judgment, I believe you stated that it was a compromise judgment—that is, a large portion of the warrants, being raised warrants, were thrown out and judgment was entered for the balance?

A. That is my recollection about it, but I do not recollect how much. My recollection is—I won't be positive about it—somewhere about seven hundred or one thousand dollars; some such matter as that.

Q. That is the judgment agreed upon between you, as attorney for the county, and Hulburd, as attorney for the plaintiff?

195 A. Yes; I think I reported to the board of county commissioners to make that arrangement, if I remember right.

Q. Now, you stated in your direct examination that the time that this assignment was made the judgment was worth less in the hands of the plaintiff; that it would have been worth not more than a thousand dollars in anybody's else hands. Now, isn't it a fact at that time the county commissioners had paid some claims and judgments by a special levy, and were they not at that time contemplating paying this judgment in the manner that they afterwards did—that is, making a levy to pay it?

A. In the administration of the affairs of the county it became nec-

essary to allow judgments to some of the county officers. I think Mr. Peter Becker, sheriff, was allowed a judgment; Dr. Law, as county physician. There were other judgments outstanding—the Fitzgerald judgment and the Baker judgment and several others—that were had upon county warrants. As I recollect, they were not dealt with in reference to payment until some time after, but the Becker judgment and the Law judgment were levied the same year that they were given for the purpose of aiding these men to carry on the affairs of their offices.

Q. The county commissioners ordered a levy of twelve or fifteen mills to pay this judgment?

A. My recollection is in the arrangement made with Mr. Wood, which, I think, was put in writing and spread upon the records of the board, that in consideration of his throwing off twenty-five per cent. of the face of the judgment they would levy two mills on the dollar until the judgment was paid.

Q. They did this very soon after or before Mr. Wood bought it, didn't they?

196 A. No; I think not. I think that was done in the fall of the year subsequent to that. I think that the Fitzgerald judgment was also treated; don't recollect whether it was the fall of 1886 or 1887; I don't recollect which of the falls; there were several other judgments compromised at the same time.

Q. You say that two of the warrants that were issued as payment of this judgment turned up in the hands of one John Alfred?

A. That is my recollection about it.

Q. Do you know how John Alfred got them?

A. Not of my own knowledge.

Q. Do you know from what he told you?

A. Well, I am inclined to think he told me he purchased them from Hulburd—I think so.

Q. Concerning this conversation detailed by Mr. Higgenbotham in his testimony, occurring at the corner of Arapahoe and Sixteenth streets, you say that you had no such conversation. The question is, "State whether or not you had such conversation as that with Mr. Higgenbotham at the corner of Arapahoe and Sixteenth streets, in Denver." You answer, "No, sir." Now, I will ask you if you had any conversation with Mr. Higgenbotham, either at Arapahoe or any other street, concerning the Lucien Baker judgment—what he would take for it.

A. I have no recollection of such. Mr. Higgenbotham was, like other creditors of the county at the time, making inquiries about the status of county matters. I don't recollect any such conversation. I was not authorized by the board to make the offer he says I did.

Q. Did you have any conversation about that matter—as to what he would take for the judgment?

A. I think not.

Q. Did Seeley, in your presence?

A. Don't recollect any.

197 Q. Was there any change in the law, either by the decisions of the court or by the action of the legislature, between the 19th day of June, 1886, and the resolution of the board October 22nd agreeing to pay seventy-five per cent. of that judgment by levy in the year 1886? I understood you to say that by the acts of the legislature there could not have been. Is there any that you know of?

A. Could not have been; the legislature was not in session.

Q. Was there any decision of the court on any of these questions intervening between June 19th, 1886, until the 22nd day of October, 1886?

A. I don't recollect. I don't know that there was. The second decision of the supreme court on the subject seems to have been rendered at the December term, 1886.

DAN'L E. PARKS.

Subscribed to and duly affirmed before me this 22nd day of July, A. D. 1890.

JOHN W. WEBSTER, *Examiner.*

By consent of counsel, adjourned until Tuesday, the 29th day of April, 1890, at 3 o'clock p. m.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Tuesday, the 29th day of April, 1890, at the hour of 3 o'clock p. m., counsel for the respective parties being present, S. N. WOOD, a witness produced by the defendants, upon being duly cautioned and sworn by me to testify the truth, the whole truth, and nothing but the truth, testified as follows:

198 Direct examination by Mr. J. F. VAILE:

Q. State your name, age, and place of residence.

A. My name is Samuel N. Wood; am 45 years of age; I live in Denver.

Q. What is your business?

A. I am cashier of the First National Bank of Denver.

Q. Are you the Samuel N. Wood who is named as a defendant in the suit brought by Lucien Baker against E. M. Hulburd and others?

A. I believe I am.

Q. In the purchase of the judgment obtained by Baker against the board of county commissioners of Lake county, and which was assigned by one E. M. Hulburd to you in June, 1886, you may state who, if any one, acted for you in making the purchase of that judgment.

A. Mr. N. P. Seeley.

Q. What amount of money, if any, was paid for the assignment of that judgment so made by Mr. Hulburd to you?

A. Twenty-five hundred dollars.

Q. Do you know how the money was paid?

A. I know that Mr. Seeley drew on me for twelve hundred and

fifty dollars of it, and on Rollins & Young for the balance—twelve hundred and fifty dollars.

Q. You may state where Mr. Seeley was, if you know, at the time these drafts were made.

A. He was in the city of Leadville.

Q. What relation, if any, did Mr. Seeley at that time occupy to Rollins & Young? Was he at any time connected with them in business?

A. Whether he was financially interested in that firm I do not know. I know he was subsequently; he may have been at that time. He was active in the management of their business in various ways.

Q. You may state whether Mr. Seeley afterwards handed
199 you any receipt showing the payment of that money.

A. He handed me a receipt from Mr. Hulburd for the money.

Q. You may look at this and state whether or not that was the receipt handed you.

A. Yes, sir (looking at the receipt handed by Mr. Vaile to witness); that is the receipt.

Receipt objected to as immaterial and because there is no issue in the case as to the payment of this money from Mr. Seeley to Mr. Hulburd, but consents that the receipt may go into the evidence by copy.

The receipt is as follows:

"LEADVILLE, COLO., *June 19th*, 1886.

"Received of N. P. Seeley for S. N. Wood twenty-five hundred dollars, in full payment of sum paid for judgment of Lucien Baker -gainst county of Lake, which judgment I hold and own under an assignment from said Baker to me.

E. M. HULBURD."

Q. You may state whether or not before the purchase of that judgment you caused any investigations to be made as to Mr. Hulburd's title to the judgment.

A. I had the records of the court examined by the office of Wolcott & Vaile—the United States court—and received the report from them that the judgment appeared from the records as all right.

Q. At the time of your purchase of this judgment from Mr. Hulburd what knowledge, if any, did you have of his holding it in trust and not in his own right?

A. I had no knowledge. If he held it in trust I did not know it.

Q. What information, if any, did you have as to Mr. Hulburd having executed a declaration of trust in reference to this judgment?

A. I had no information that he had executed any.

Q. You may state whether or not in purchasing this judgment you believed that Mr. Hulburd was the owner of it and had the right to convey it.

Objected to because it is not a material question as to
200 whether Mr. Wood believed he had the right to sell it, and it is not a question of fact at issue in this case.

A. I did believe it.

Q. You may state whether Daniel E. Parks in any way represented you, as agent or otherwise, in the purchase of this judgment.

A. He did not.

Q. In your capacity as a banker, did you in the summer of 1886 have any knowledge of the value of securities of Lake county or claims against that county generally?

A. I had general knowledge only.

Q. You may state from your knowledge of the way in which such claims and securities were sold, or from any knowledge you had of the condition of Lake county, as to what the reasonable value of this judgment was at that time.

Objected to for the reason that it does not appear from the witness's statement that he knows what the value of this judgment against Lake county was.

A. Claims against Lake county at that time were regarded as of very little value on the market. I had several judgments offered to me at various prices, which I declined to buy—all the way from ten cents on the dollar up.

Q. I will ask you to state if you ascertained before purchasing this judgment as to whether or not any portion of it had been paid or in any way discharged.

A. It was my understanding that no part of the judgment in favor of Lucien Baker had been paid, but in the rendering of this judgment, if I am rightly informed, there was a consolidation with a judgment rendered in favor of John Alfred, and the two together amounted to $15,982.70. Of that amount $3,772.10 belonged to John Alfred, making the face of the Baker judgment $12,210.60.

201 Q. Then the nominal face value of the judgment you were buying was how much?

A. It was about twenty cents on the dollar, or the face value of it was $12,210.60.

Q. You may state as to whether or not in purchasing that judgment you obtained any certified copy of an order of the board of county commissioners of Lake county in reference to warrants that had previously been ordered made in connection with that judgment.

A. I did obtain such a copy.

Q. You will look at the instrument I hand you and state whether or not that is a certified copy of the order you refer to.

A. (Witness taking paper.) It is.

Certified copy of order of board of county commissioners is introduced in evidence and marked Exhibit 4.

Objected to as immaterial.

Q. Did you afterwards, while you were the owner of this judg-

ment, make some arrangement of compromise with the board of county commissioners of Lake county in reference to its payment?

A. I did.

Q. You may state whether or not you have a certified copy of any order of the board of county commissioners based upon any offer of compromise.

A. I have such an order.

Q. You may state whether the paper I hand you is such certified copy (handing paper to witness).

A. Yes.

Certified copy of order of board of county commissioners of date of October 23rd, 1886, is offered in evidence and marked Exhibit 5.

Cross-examination by Mr. REED:

Q. Mr. Seeley, then, was your agent in the purchase of this judgment from Mr. Hulburd?

A. Mr. Seeley was representing Rollins & Young and myself. Rollins and Young were my partners. We were equally interested in it.

202 Q. Well, then, he was acting as your agent so far as your interest was concerned?

A. He performed the deal, I taking title to the judgment.

Q. He purchased it, didn't he?

A. He did.

Q. When was that?

A. I don't remember the precise date. I suppose the receipt will show.

Q. Was it the date of the assignment of it?

—. I presume it was. I could not now state positively the precise date, except from the papers.

Q. That was all you had to do about it, just to confer with Mr. Seeley and tell him to purchase it, and you take half of it and he half?

A. We conferred about it before Mr. Seeley went to Leadville and agreed to buy the judgment and become equal owners of it.

Q. And how long was that before he went to Leadville?

A. I think that was about that time; it may have been a week or it may have been a few days before; to the best of my recollection, it was only a few days before; still, I may be mistaken. I think it was only a short time before.

Q. Then you never did pay $2,500 for that judgment?

A. I paid $1,250 and they paid $1,250.

Q. I suppose all the talk you had with Mr. Hulburd or all the negotiations or dealing with Hulburd in this behalf was done by Seeley?

A. I never saw Mr. Hulburd to my knowledge; would not know him if I saw him to-day.

Q. Mr. Parks talked to you about it before this, didn't he?

A. To the best of my recollection, about the only talk I had with Mr. Parks on the subject was when we made this compromise with

the county; think Mr. Parks was the county attorney, and I
203 think we had one or two conversations on the subject of this judgment as to whether suit should be brought. We were talking about enforcing this judgment in the courts; and after the commissioners became satisfied that we would attempt something of that kind they then came forward with the proposition which we accepted, which is explained in that order; and Mr. Parks, I think, was county attorney at that time and we had more or less negotiations with him about it.

Q. It appears from this order—you looked at that, didn't you?

A. Yes; I did.

Q. It appears from this order that you, through your agent, made a proposition instead of the county making it, as you state.

A. That may be. I think, however, it was understood that their proposition would be accepted. I can't state positively; I can't describe all the negotiations that occurred before we arrived at this agreement; but, at any rate, when the proposition was made it was understood then that it would be accepted.

Q. Now, you have read Mr. Seeley's testimony, hav-n't you?

A. A long time ago; I have not read it recently.

Q. Mr. Seeley in his testimony testifies that he returned from California, and in a conversation with you immediately after his return you told him you had purchased that judgment, and that if he wanted to go in he must declare himself then. Now, then, with whom had you dealt or from whom had you purchased the judgment before Mr. Seeley went up there to Leadville this time that he had returned from California and the time of the purchase finally—the closing up of the transaction?

A. That is a mistake about my having purchased the judgment before this time. I had not purchased it. We had talked about this judgment upon several occasions; may have been two or
204 three—possibly more—I don't remember how many—and each time, after having a conversation about it, the matter dropped. Before Seeley went up to Leadville upon this occasion we had another conversation about the subject of this judgment, and I in the meantime had had the judgment looked into by Wolcott & Vaile and became satisfied, so far as I could see, that it was perfectly regular and right, and in that conversation I said to Seeley, "I am going to buy this judgment. We have had several conversations about it, and if you want to come in with me, all right. I think I am going to buy this." He then said, "If you feel that way I will go in with you; we will be equal owners;" and he said, "I will go up to Leadville in a few days, and I will buy this judgment." That is the best of my recollection. I didn't buy the judgment before this; that is a mistake.

Q. Had you not had a talk with anybody but Seeley about buying it up to that time?

A. I don't remember that I had any talk with anybody else but Seeley about it. I may have had a conversation with Mr. Parks about it; don't remember how much of a conversation. I may have asked him about the judgment in some way.

Q. Isn't it a fact (I will ask you this question, as it may refresh your recollection) that Mr. Parks came to you or saw you here in Denver—I don't remember where—and told you that Hulburd had got an assignment of that judgment and he would sell it for some price—fixing some price?

A. He may have done so. I don't remember that he did. My recollection is that the first I ever heard of the judgment the assignment to Mr. Hulburd was already on record. I don't know how long prior to this time. I think the title was already in Mr. Hulburd then.

Q. You say that you then had Wolcott & Vaile look into it before Seeley went to Leadville and after the assignment had been filed in the clerk's office?

205 A. I am not sure about the assignment; I suppose it was. Wolcott & Vaile examined it for me. I don't know whether the assignment was on file or not; I suppose it was.

Q. This looking up by Wolcott & Vaile occurred before Seeley got back from California?

A. It occurred some time in June, I think.

Q. It was before the conversation you had with Seeley when you told him that you had concluded to buy this judgment and he could come in or not as he pleased?

A. Yes; I had counsel before I decided to buy it.

Q. Wolcott & Vaile examined the records in reference to it?

A. Yes.

Q. Now, you say in your answer filed in this case that you carefully examined into the authority of Huldburd to sell that judgment. Will you state what you did which constituted a careful examination mentioned in this portion of your answer: "And these defendants, further answering, show that heretofore, to wit, on or about the 15th day of June, 1886, the defendant E. M. Hulburd came to see said defendants and proposed to sell to them a certain judgment in the bill of complaint described; that these defendants carefully inquired of the said Hulburd as to his authority to sell the same and demanded that he exhibit the said authority in writing; that thereupon the said Hulburd produced and exhibited to these defendants an assignment of said judgment in the words and figures following"?

A. First of all, I had the question of the validity and regularity of the judgment examined into by Wolcott & Vaile. Before Mr. Seeley went to Leadville I said to him, "Before you buy this judgment from Mr. Hulburd I want you to satisfy yourself in every way possible you can as to whether there is any reason why his title is not good or any reason why he should not sell or transfer it." Upon his return, Mr. Seeley informed me——

Q. I further wish to ask you what you mean by stating in this answer that E. M. Hulburd came to see you and proposed to

206 sell to you—that is, to you and Seeley—a certain judgment in the bill of complaint described.

A. My answer was prepared by Wolcott & Vaile.

Q. You say that this answer that you swear to was prepared by your attorneys?

A. Yes, sir.

Q. It was sworn to by you, and you swear that you know that the contents therein contained are true of your own knowledge. Now, then, do I understand you to say as a witness that you do not undertake to swear to the truth of all the allegations your attorneys have put in this answer?

A. I was going to say, when you interrupted me, that upon Seeley's return he informed me that before he paid Hulburd the money he asked him if there was any reason why he could not sell or transfer that judgment, and Hulburd assured him that he was the owner of it; that there was no reason why he could not sell it; that he wanted to sell it, and did. That is the only answer I can make.

Q. You then made this answer here filed in this case upon what Mr. Seeley had told you?

A. Partially upon the information received of Mr. Seeley.

Q. Then it was nor true, so far as you were concerned, that E. M. Hulburd ever came to you or said a word to you?

A. Hulburd never came to me about it; I never saw him in my life.

Q. Now, then, you had been negotiating for this judgment prior to the time that Seeley went up to Leadville, had you not?

A. There had been a conversation about the purchase of this judgment at least on one occasion before, and possibly more; I am not sure whether there was more than one; but I am quite positive, one.

Q. With whom did you negotiate?

A. I talked with Mr. Seeley about it; possibly Rollins &
207 Young; I may have had conversation with Rollins also; I am not sure about that.

Q. Did you do any dickering or bargaining with anybody that owned or pretended to own or represent the owners of the judgment?

A. I think my negotiations were with Seeley; my information came from him. After we had discussed it once or twice Seeley lost interest, and my interest, I think, increased subsequently.

Q. And you talked with nobody during Seeley's absence?

A. I may have talked with Mr. Parks; if so, I have forgotten it. Mr. Parks was county attorney, and I may have asked him about it. I don't remember any of the details. I don't say I didn't have a conversation with him.

Q. Now, Messrs. Wolcott & Vaile didn't undertake to advise you anything about the assignment to Hulburd by Baker before that assignment was filed, did they?

A. I presume not.

Q. The only thing they did advise you about was as to the validity of the judgment as between the owner of it and Lake county?

A. I wrote them a note asking them to advise me in regard to the legality of that judgment, describing it; probably informed

them where they could find the record of it; presume I did. They advised me that they found it regular and in their opinion was legal. That was as far as I expected them to go.

Q. Now, then, in this answer it is further stated that "said Hulburd was offering the same (referring to the judgment) for sale at various banks and various brokers in the city of Denver; that as a result of the various negotiations of the said Hulburd these defendants offered to buy said judgment from said Hulburd for the sum of twenty-five hundred dollars ($2,500)." Now, is that statement made of your own knowledge or upon information received from Seeley?

A. Information from Mr. Seeley in regard to it, because, as I said before, I never had seen Mr. Hulburd.

Q. Continuing the same answer, it is alleged—"which,
208 through the uncertainty of the collection of said judgment and the speculative character of its value, was all that said judgment at said time was reasonably worth." Now, you made an arrangement with the county commissioners October 22nd that they would pay you seventy-five per cent. of that judgment and interest, didn't you?

A. Yes, sir.

Q. Now, what occurred between the 19th day of June, when you bought it, and the 22nd day of October, when the county commissioners made this arrangement to pay you, to increase the value of that judgment to such an alarming extent?

A. It is my recollection that you will find that in that interval there were rendered some very important decisions in the court which did away with a large part of the indebtedness of Lake county then existing. Of course, this would naturally increase the value of that part which was legal, and there was a large amount of warrants repudiated and a large amount of bonds.

Q. Didn't you know, as a matter of fact, and was it not in your own mind when you dealt for that judgment, that these decisions had been rendered and that about a million dollars of the indebtedness of Lake county had been wiped out, as it were?

A. I can't give you the dates of those decisions.

Q. Wasn't it that that moved you to buy it—the very fact that this indebtedness, as you then supposed, had been wiped out?

A. Well, I didn't know that it had been. I don't remember the dates of those decisions well enough to say whether that was the case.

Q. You know whether it was in your own mind when you made that arrangement?

A. I think these decisions occurred during the interval that I speak of. I remember very well of thinking that our chances of getting the money from the Lake county commissioners had been
materially increased by these decisions, but I can't give you
209 the dates of these decisions. This is several years ago, and I don't remember distinctly the dates; the records, I suppose, will show that.

Q. The county of Lake has proceeded to collect that tax and remit you the two mills on the dollar so collected, has it not?

A. It has, of course.

Q. They have remitted all the taxes they have collected?

A. They have been very regular during the tax-paying season.

Q. How much have they remitted you?

A. Well, I think some eight or ten thousand dollars; maybe more, not less than eight thousand, and it may be ten. I don't give the figures exactly, because I don't remember them. I have kept all the figures, but they are not in my head. I simply don't remember them. I think the commissioners are keeping their part of the contract; they have been paying us regularly.

Q. You were notified by Mr. Lucien Baker, the plaintiff in this suit, previous to your collecting any of this money, were you not, that he was the owner of that judgment, and that Hulburd had no authority to sell it to you?

A. I remember his calling on me at one time and making such a statement, but I don't remember the date of it.

Q. Well, you know it was before you got any money?

A. I think it was. I think it was some time in the summer that I bought the judgment or in the spring, and this arrangement was made the following fall. I think it was during that summer that I saw Mr. Baker.

Q. You think that you understood from some one at the time that you made the proposition through Mr. Alfred to take seventy-five per cent. of the judgment and interest, if this tax was levied, that such a proposition would be accepted by them?

210 A. I would like to answer that at length. My recollection is that it came about in this way: The part of this judgment that was owned by Mr. Alfred they had issued to him new warrants for—what they called judgment warrants—prior to the time that we became the owners of this Baker part, but he had never received them from the county commissioners, having been left in their books, and after we purchased this judgment Alfred came to us and said, "If you don't object I would like to have my judgment stand—my part of it—with yours as a whole, and not receive these warrants," which we agreed to. Then he wanted us to move for the collection of the judgment, to press it, which I proceeded to do, and we were negotiating, more or less, in regard to it; and, finally, I think Alfred is the man who saw the county commissioners and received an intimation from them that they would levy a tax and pay the judgment off gradually, provided a certain amount would be thrown off—twenty-five per cent. Now, as to whether they positively agreed to that before, I don't know that they ever did, but it was my understanding that they had tacitly agreed that if we would throw off twenty-five per cent. they would agree to make this levy. That, I think, is the history of it as near as I can recollect it.

Q. Did you correspond with any one in Leadville about this judgment, before Seeley went up there or while he was there to purchase it, either by telegram or letter?

A. I don't remember that I did; may have done so, but I don't remember.

SAMUEL N. WOOD.

Subscribed and sworn to before me this 1st day of May, A. D. 1890.

JOHN W. WEBSTER, *Examiner.*

211 And thereupon the defendants introduced in their behalf as a witness FRANCIS W. TUPPER, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. VAILE:

Q. State your name, age, place of residence, and occupation.

A. Francis W. Tupper; age, fifty years; deputy clerk of the United States court.

Q. You may state whether there is on file in the office of the clerk of the United States court an assignment of a judgment rendered in favor of Lucien Baker against the board of county commissioners of Lake county and assigned by E. M. Huiburd to one S. N. Wood.

A. There is such a paper on file.

Q. What was the date of the filing of the same?

A. June 21, 1886.

Q. You may state whether you now have in your hand the original assignment that was filed in the office of the clerk.

A. I have.

Q. I will ask you to state whether any name is endorsed upon that assignment at the bottom as attorney.

A. The name of D. E. Parks appears as "att'y for def't," Lake county.

Q. You may state in whose handwriting the words "D. E. Parks, att'y for def't," are made.

A. The attorney's name is endorsed on the bottom in my handwriting.

Q. You may state whether you occupied the position of deputy clerk of the United States court on the date of the filing of this instrument, June 21st, 1886.

—. I did.

Cross-examination by Mr. REED:

Q. Do you remember who filed it?

A. Mr. Parks brought it into the office.

FRANCIS W. TUPPER.

212 Subscribed and sworn to before me this 2nd day of May, A. D. 1890.

JOHN W. WEBSTER, *Examiner.*

EXHIBIT 1. John W. Webster, Examiner.

No. 14214. LEADVILLE, COLORADO, *Dec.* 11, 1885.

Treasurer of Lake county

Pay to Lucien Baker or bearer fifteen thousand six hundred eighty-nine and $\frac{16}{100}$ dollars out of county fund on account of judgment.

By order of board of county commissioners:

$15,689.16. F. DE MAINEVILLE, *Chairman.*

Attest: F. M. REARDON,
County Clerk.

[Written across face:] Canceled Sept. 6, 1886.

EXHIBIT 2. John W. Webster, Examiner.

No. 14215. LEADVILLE, COLORADO, *Dec.* 11, 1885.

Treasurer of Lake county

Pay to Lucian Baker or bearer five hundred $\frac{00}{100}$ dollars out of county fund on account of judgment.

By order of board of county commissioners:

$500.00. F. DE MAINEVILLE, *Chairman.*

Attest: F. M. REARDON,
County Clerk.

(Indorsed:) 14215. Dec. 11, 1885. Issued to Lucien Baker on ac. of judgment. Received above. E. M. Hulburd, att'y for Lucien Baker. $500.00. Exhibit 2.

EXHIBIT 3. John W. Webster, Examiner.

No. 14216. LEADVILLE, COLORADO, *Dec.* 11*th*, 1885.

Treasurer of Lake county

Pay to Lucian Baker or bearer three thousand two hun-
213 dred seventy-two and $\frac{10}{100}$ dollars out of county fund on account of interest on judgment.

By order of board of county commissioners:

$3,272.10. F. DE MAINVILLE, *Chairman.*

Attest: F. M. REARDON,
County Clerk.

(Indorsed:) No. 14216. Dec. 11, 1885. Issued to Lucian Baker on account of interest on judgment. Received above. Lucian Baker, by E. M. Hulburd, his att'y. $3,272.10. Exhibit 3.

EXHIBIT 4. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Lake, }

At a meeting of the board of county commissioners for Lake county, Colorado, held at the court-house, in the city of Leadville, on the 6th day of September, A. D. 1886, there were present F. De Mainville, chairman; J. A. De Lappe, commissioner; C. C. Kellogg, commissioner; J. Irwin, commissioner; Jno. W. Flintham, commissioner; D. E. Parks, county attorney; F. M. Reardon, clerk, by W. E. McNerney, deputy, when the following proceedings, among others, were had and done, to wit:

Ordered that the order heretofore and on the 10th day of December, A. D. 1885, made directing the issue of general fund warrants in payment of the judgment of Lucien Baker against this county, viz., warrants No. 14214 for $15,689.16, No. 14215 for $500.00, and No. 14216 for $3,272.10, be, and the same are hereby, rescinded and set aside so far as relates to said warrants and the payment of said judgment thereby.

It is further ordered that said warrants and each of them be, and the same and each of them are hereby, canceled and for naught held, the same having been delivered up to this board for that purpose, and the county clerk is hereby directed to carry this order into effect by canceling said warrants and each of them in the usual manner.

It is further ordered that the warrants ordered heretofore to be issued in payment of the judgment of John Fitzgerald, dated Dec. 11th, 1885, and numbered 14217 for $13,945.51 and No. 14218 for $2,159.14, for principal and interest, be, and the same are hereby, cancelled and the order allowing the same revoked and rescinded, and the county clerk is directed to cancel the same of record.

STATE OF COLORADO, } ss:
County of Lake, }

214 I, F. M. Reardon, county clerk and *ex officio* clerk of the board of county commissioners in and for the county and State aforesaid, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the board of county commissioners for said Lake county now in my office.

In witness whereof I have hereunto set my hand and [SEAL.] affixed the seal of said county, at Leadville, this 7th day of Sept., A. D. 1886.

F. M. REARDON,
County Clerk,
Per W. E. McNERNEY, *Deputy.*

(Indorsed:) Certified copy of order relating to cancellation of warrants Baker and Fitzgerald judgments made by the board of county commissioners of Lake county, Colorado, Sept. 6th, 1886. Exhibit 4, John W. Webster, examiner. Fees, $—.

EXHIBIT 5. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Lake, }

At a meeting of the board of county commissioners for Lake county, Colorado, held at the court-house, in the city of Leadville, on the 22nd day of October, A. D. 1886, there were present J. Irwin, chairman *pro tem.;* J. A. De Lappe, commissioner; C. C. Kellogg, commissioner; Jno. W. Flintham, commissioner; D. E. Parks, county attorney; F. M. Reardon, clerk, by W. E. McNerney, deputy, when the following proceedings, among others, were had and done, to wit:

The following order was read and, on motion, adopted by the board:

Whereas S. N. Wood, assignee of the judgment against this county known as the Baker judgment, rendered in the circuit court of the United States for the district of Colorado, at Denver, Colorado, November 12th, A. D. 1883, by John Alfred, his agent, has proposed to this board that if the county of Lake shall and will pay said judgment by levying an annual tax of two mills on the dollar until said judgment is paid that he will and does, if said judgment is so paid, discount from the face of the same twenty-five per centum of the sum thereof as a consideration of such payment, and this board having fully considered and accepted said proposition on behalf of said county in consideration thereof, it is ordered that for the year A. D. 1886 and for each and every year thereafter until the same is fully paid and satisfied there be levied and collected of and from the taxable property of the county of Lake, Colorado, two mills on the dollar of such property to pay, satisfy, and dis-
215 charge the said judgment known as the Lucien Baker judgment, now held and owned by said S. N. Wood, assignee, of Denver, Colorado, and the county treasurer of this county is hereby authorized to disburse and pay to said Wood or his order all money which may be collected and paid into the county treasury from time to time on account of all levies made to pay said judgment, which under this order and arrangement is to be paid to the extent of seventy-five per cent. thereof.

STATE OF COLORADO, } ss:
County of Lake, }

I, F. M. Reardon, county clerk and *ex officio* clerk of the board of county commissioners in and for the county and State aforesaid, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the board of county commissioners for said Lake county now in my office.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said county, at Leadville, this 23rd day of October, A. D. 1886. F. M. REARDON,

County Clerk,

Per W. E. McNERNEY, *Deputy.*

(Indorsed:) Certified copy of order concerning Lucien Baker judgment made by the board of county commissioners of Lake county, Colorado, 23rd October, 1886. Exhibit 5, John W. Webster, examiner. Fees, $8—.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

To the honorable the judges of the circuit court of the United States for the district of Colorado, in chancery presiding:

I, John W. Webster, one of the examiners in chancery of the circuit court of the United States for the district of Colorado, by consent of counsel and in accordance with the 67th rule of the Supreme Court and amendments, do hereby most respectfully certify and report unto your honors that N. P. Seeley, Samuel N. Wood, Francis W. Tupper, and Daniel E. Parks, witnesses on behalf of defendants, *who* previous to the commencement of their respective examinations in this cause were by me first duly cautioned
216 and sworn, except the witness Daniel E. Parks, who was by me duly affirmed, according to law to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between Lucien Baker, complainant, and E. M. Hulburd, Daniel E. Parks, N. P. Seeley, and Samuel N. Wood, defendants, in a certain suit now pending and undetermined in the said circuit court, so far as they should be interrogated concerning the same; that the testimony of said witnesses was taken and reduced to writing by typewriter before me and was read over to them by me in their presence and in the presence of the parties and such of the counsel as were in attendance before me, and thereupon the same was subscribed and sworn to before me by them respectively, except Daniel E. Parks, who was solemnly affirmed, according to law, the oaths and said affirmation being administered by me, as examiner, at my office, in Denver, on the dates set forth in the jurats appended to the foot of the testimony of each witness as hereinbefore set forth.

I further certify and report that the defendants introduced and offered in evidence on their behalf papers and documents marked as Exhibits 1, 2, 3, 4, & 5, and which are hereto attached and made a part of the proofs in this cause; that I have consecutively numbered the folios of testimony herein from 1 to 224 in red-ink figures upon the left-hand margin thereof, and that the taking of testimony was continued from time to time as hereinbefore set forth.

And I further certify and report that I am not an attorney, solicitor, or of counsel for either of the parties in this cause or otherwise interested in the event of this suit.

All of which is respectfully subscribed.

JOHN W. WEBSTER, *Examiner.*

Denver, October 18th, 1890.

217 *Examiner's Fees.*

Taking def'ts' testimony, 224 fo's, at 20	44 80
2 copies each, 10 cents p'r folio	44 80
3 days' attendance at 3.00	9 00
Administering 3 oaths & 1 affirmation at 10	40
Marking & attaching 5 exhibits at 10	50
Total examiner's fees	$99 50

Received pay't of Samuel N. Wood, Esq.
JOHN W. WEBSTER, *Examiner.*

Denver, October 18th, 1890.

(Indorsed:) No. 2042. Lucien Baker, compl't, *vs.* E. M. Hulburd, Daniel E. Parks, N. P. Seeley, and Samuel N. Wood, def'ts. Defendants' testimony & proofs. Filed Oct. 18, 1890. William A. Willard, clerk.

And afterwards and on, to wit, the 23d day of December, A. D. 1890, came George H. Taylor, administrator, e.c., by J. N. Hughes, Esq., his solicitor, and filed in said court and in said cause a certain stipulation as to pleadings.

And the said stipulation is in words and figures as follows, to wit:

Stipulation: Pleadings to Stand as to Taylor.

In the Circuit Court of the United States, District of Colorado.

LUCIEN BAKER
vs.
E. M. HULBURD, SAMUEL N. WOOD, DANIEL E. PARKS, and GEORGE TAYLOR, Administrator of the Estate of M. P. Seeley, Deceased.

218 And now comes the said George H. Taylor, administrator of the estate *to* N. P. Seeley, deceased, by J. N. Hughes, his attorney, and the plaintiff, by Clinton Reed, his attorney, and the said J. N. Hughes enters the appearance of the said Taylor as such administrator, and it is stipulated that said cause shall proceed without any amendment charging said Taylor as administrator, but the answer of the said Seeley, deceased, shall stand as and for the answer of the said administrator, and the same shall be heard and determined upon the testimony taken in said cause with like effect as if an amended or supplemental bill had been filed containing apt words to charge said defendant, Taylor, as such administrator.

CLINTON REED,
Att'y for Pl'ff.
J. N. HUGHES,
Att'y for George H. Taylor, Administrator, &c.

(Indorsed:) 2042. Lucian Baker *vs.* E. M. Hulburd *et al.* Stipulation that answer of Seeley shall stand as the answer of his administrator. Filed Dec. 23, 1890. William A. Willard, clerk.

And afterwards and on, to wit, the 23rd day of December, A. D. 1890, came the said defendant, Wood, by Messrs. Wolcott & Vaile, his solicitors, and filed in said court and in said cause his answer to the supplemental bill heretofore filed herein.

And the said answer is in words and figures as follows, to wit:

Answer of Wood to Supplemental Bill.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court.

219 LUCIEN BAKER, Plaintiff,
vs.
E. M. HULBURD, DANIEL E. PARKS, N. P. SEELEY, and SAMUEL N. WOOD, Defendants.

Comes now Samuel N. Wood, one of the defendants above named, by Messrs. Wolcott and Vaile, his solicitors, and for a separate answer to the supplemental bill of complaint herein alleges—

That at and prior to the assignment to the said Samuel N. Wood of the judgment in the original bill of complaint set forth and described, being, to wit, on and before the 19th day of June, 1886, one John Alfred was the equitable owner of a part interest in said judgment, amounting, as this defendant is advised and believes and so alleges, to the sum of three thousand seven hundred and seventy-two dollars and ten cents ($3,772.10) of the principal thereof, and that at the date of the said assignment the plaintiff herein, Lucien Baker, had no right, title, or interest in that portion of said judgment so belonging to the said John Alfred, and that the assignment of said judgment to this defendant was subject to the equitable interest of the said John Alfred therein.

And this defendant admits that since the commencement of this suit and the filing of the original bill of complaint therein and up to the filing of the said supplemental bill as aforesaid the treasurer of Lake county, Colorado, had at various times paid upon said judgment so assigned to this defendant fifty per cent. of the amount thereof, pursuant to an agreement between the said county and this defendant that this defendant would satisfy said judgment upon the payment by said county to him of seventy-five per cent. of the amount thereof, and that the said portions of said judgment have been paid by said county in installments.

220 And this defendant alleges that the total amount so paid upon said judgment up to the date of filing of said supplemental bill was twelve thousand three hundred and seventy-seven dollars and seventy-two cents ($12,377.72), of which the sum of three thousand one hundred and seventy-six dollars ($3,176.00) has been paid to and received by the said John Alfred or assigns; the sum of four thousand six hundred and eighty-six dollars ($4,686.00) had been paid to and received by Rollins and Young as successors in interest of the said N. P. Seeley, and four thousand and six hun-

dred and eighty-six dollars ($4,686.00) had been paid to and received and retained by this defendant.

And this defendant denies that he has no right to hold or keep said money so collected on said judgment, and denies the same is the property of or belongs to the plaintiff, and, on the contrary, alleges that he is entitled to receive and hold the money so received by him as aforesaid under and by virtue of the assignment of said judgment, as in the answer to the original bill more fully set forth.

Wherefore this defendant asks to be hence dismissed with his costs, as in the original answer prayed.

WOLCOTT & VAILE,
Sol'rs for Defendant.

Samuel N. Wood, being first duly sworn, deposes and says that he is one of the defendants in the above-entitled cause; that he has read the foregoing answer to the supplemental bill of complaint herein and knows the contents thereof; that the facts therein stated are true of his own k nowledge except matters therein stated on information and belief, and as to such matters he believes it to be true.

SAMUEL N. WOOD.

221 Subscribed and sworn to before me, a notary public in and for the county of Arapahoe, this 23d day of December, A. D. 1890.

[SEAL.] W. C. THOMAS,
Notary Public.

My commission expires Sept. 26, 1893.

(Indorsed:) 2042. U. S. circuit court. Lucien Baker, pl'ff, *vs.* E. M. Hulburd, Daniel E. Parks, N. P. Seeley, and Samuel N. Wood, def'ts. Answer of S. N. Wood to supplemental bill of complaint. Filed Dec. 23, 1890. William A. Willard, clerk. Wolcott & Vaile, att'ys for def't Wood.

And afterwards and on, to wit, the 24th day of December, A. D. 1890, came again the said complainant, by his solicitor aforesaid, and filed in said court and in said cause his replication to the answer of Wood, heretofore filed herein.

And the said replication is in words and figures as follows, to wit:

Replication to Answer of Wood to Supplemental Bill.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court within and for said District.

LUCIEN BAKER, Complainant,
vs.
E. M. HULBURD, DANIEL E. PARKS, SAMUEL N. WOOD, & ——— ———, Administrator of the Estate of N. P. Seely, Deceased.

222 The replication of Lucien Baker, the above-named complainant, to the answer of Samuel N. Wood, defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefits and advantage of exception which may be had and taken to the manifold insufficiencies of the said answer to the supplemental bill of complaint heretofore filed in said cause, for replication thereto says that he will aver, maintain, and prove his supplemental bill *and* complaint to be true and sufficient in law to be answered unto, and that said answer of the said defendant is untrue, uncertain, and insufficient to be replied unto by repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

CLINTON REED,
Solicitor for Complainant.

(Indorsed:) 2042. Lucien Baker *vs.* Samuel N. Wood *et als.* Replication to answer of S. N. Wood. Filed Dec. 24, 1890. William A. Willard, clerk.

And afterwards and on, to wit, the 24th day of December, A. D. 1890, the same being one of the regular juridical days of the November term, A. D. 1890, of said court—present, the Honorable Moses Hallett, district judge—the following further proceed-
223 ing was had and entered of record in said court and in said cause, to wit:

Order: Hearing and Taken under Advisement.

LUCIEN BAKER
vs.
E. M. HULBURD, DANIEL E. PARKS, SAMUEL N. WOOD, and George Taylor, Administrator of the Estate of N. P. Seeley, Deceased. } 2042. In Chancery.

Bill to cancel an assignment of judgment and for other relief.

At this day comes the said complainant, by Clinton Reed, Esq.,

his solicitor, and the said defendants, Parks, Wood, and Taylor, administrator, by J. F. Vaile, Esq., their solicitor, no one appearing for the said defendant Hulburd; and this cause coming on now for final hearing upon the bill of complaint, the respective answers and replications thereto, and the testimony taken herein, and the court, having heard the same, together with the arguments of counsel, doth take the matter under advisement.

And afterwards and on, to wit, the 2nd day of January, A. D. 1891, the same being one of the regular juridical days of the November term, A. D. 1890, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Final Decree.

LUCIEN BAKER *vs.* E. M. HULBURD, DANIEL E. PARKS, SAMUEL N. WOOD, and GEORGE TAYLOR, Administrator of Estate of Nathaniel P. Seeley, Deceased.	2042.	In Chancery.

Bill to cancel an assignment of judgment and for other relief.

This cause coming on for final hearing upon the bill, answer,
224 and replication, and upon the supplemental bill, answer thereto, and replication to said answer, and upon the evidence of the respective parties duly taken and published, and the same having been argued by counsel and a final hearing had upon the merits of said cause, and the court being fully advised—

It is by the court ordered, adjudged, and decreed that the said bill and supplemental bill be dismissed out of this court without costs as to the said defendant, E. M. Hulburd, and with costs for the defendants Samuel N. Wood, Daniel E. Parks, and George Taylor, administrator of the estate of Nathaniel P. Seeley, deceased, such costs to be taxed against the plaintiff, Lucien Baker, and by him paid to the said last-named defendants.

And afterwards and on, to wit, the 17th day of January, A. D. 1891, came again the said complainant, by his solicitor aforesaid, and filed in said court and in said cause his petition for a rehearing of said cause.

And the said petition is in words and figures as follows, to wit:

Petition for Rehearing.

In the United States Circuit Court, District of Colorado.

LUCIEN BAKER *vs.* E. M. HULBURD *et al.*	No. —.

Comes now the said complainant, Lucien Baker, by Clinton Reed,

Esq., his solicitor, and files this his petition for a rehearing in said cause and respectfully shows to the court here the special matters upon which such rehearing is applied for:

First. The court erred in finding as matter of fact that re-
225 spondents Wood and Seeley had no notice of the infirmity in Hulburd's title to the judgment, and, as most important upon that point, complainant shows that Seeley, when upon the stand, while denying that he knew of the declaration of trust, says Hulburd offered him the judgment for fifty or sixty cents on the dollar; that afterwards, at the club, Wood said, "Why not buy this judgment?" He, Wood, said it had been offered to him; that he then told Wood of the conversation he had had with Hulburd, and that Hulburd talked too much. Why did he talk too much if he owned the judgment? Then Seeley goes to California, and on the morning after his return he meets Wood, and Wood tells him that he had just closed the trade for that judgment; had absolutely bought it. (Previously, however, he says, they had concluded to buy it if they could buy it cheap enough); that Wood then said you can declare yourself in, if you wish, and he declared himself in. Now, was Seeley lying when he swore to this or was Wood lying when he told Seeley, at the club, that it had been offered to him, or when he told Seeley that he had bought it, or when he, Wood, swears Parks had nothing to do with the purchase on his behalf.

Wood swears that he never saw Hulburd; that he may have talked with Parks, but had no negotiations through Parks. Who was it who offered it to him? With whom had he negotiated while Seeley was in California? He has never told, though he admits, and so does Parks, that they talked about it, but did not negotiate.

Seeley also swears that Wood said he had taken time to look the matter up and see if there was anything wrong in the matter, and Seeley went to Leadville to look the matter up and find out if there was anything wrong in the matter of this man who talked too much selling a twenty-thousand dollar ($20,000.00) judgment
226 against one of the wealthiest counties in the State for twenty-five hundred dollars ($2,500.00), and that drawing interest at ten per cent., his attorneys having informed him, upon examination, that everything was valid and legal, and Seeley says Wood told him that if he found nothing was wrong to pay twenty-five hundred dollars and take the judgment, which was the amount Seeley says Wood told him he, Wood, had agreed to pay for the judgment. With whom had he agreed? He had never seen Hulburd, had only talked with Parks on the street; had not negotiated with him. Wood, when asked on the witness stand, on cross-examination, whom he did negotiate with, says — had not bought it till Seeley went up to Leadville; but, according to Seeley, when he went up to Leadville he was only to find out what was wrong; was not to bargain or dicker, but simply pay twenty-five hundred dollars, the limit Wood had agreed to pay. Seeley says when he got to Leadville nobody knew he was there quicker than Hulburd. He wanted money, which confirms Wood's statement to Seeley that he had bought it and agreed to pay twenty-five hundred dollars for it if there was

nothing wrong, but it don't disclose th-ough whom Wood had acted when buying it; but Seeley says he had to look around, telegraph back to Denver to the clerk, and then went to work to see if anything was wrong.

Higinbotham, agent of plaintiff, was there, but he did not go to see him, although Hulburd then and there told him that Higinbotham and Barnes owed him and he was selling Lucien Baker's judgment to get the money that Higinbotham and Barnes owed him.

Seeley says: I asked Hulburd in so many words before witnesses, "Now, you know you are a little uncertain, and I want you to tell me if there is any reason on earth why you have not full power to dispose of this judgment and whether it is not yours;" and then Hulburd explains why it is his, which explanation shows
227 Seeley then and there that it was not his in reality, but he had the assignment; but Hulburd does not even pretend that he owns any interest in it except to the extent of his fees, nor does he pretend to Seeley that Baker owes him any fees.

Hulburd told Seeley that Higinbotham and Barnes had always promised to pay him out of this money when it was collected, not when Hulburd sold it for twenty-five hundred dollars; and Seeley says, after detailing this conversation with Hulburd, "I thought it looked like a gamble." Then Seeley was asked if Parks had anything to do with it and answered:

"I think he was agent; always thought he was in with it and got part of the money."

And on being asked if Parks was Wood's agent, he says:

"I don't know; I was in California, I think, at the time. Parks was as anxious to make the trade as anybody."

The testimony of Parks confirms Hulburd as to the conspiracy between himself and Hulburd to procure the assignment. Hulburd says and Park says the purpose of the assignment was ostensibly to get Baker to make the assignment to Hulburd under the belief that the commissioners would pay Hulburd when they would not pay Baker. They each say they talked over the matter of the form of the assignment and agreed upon it; that when Hulburd got it he forwarded it to Parks; that it was sent back, and that Parks was cognizant of everything that was being done; knew how Hulburd got it; knew he was selling it to Wood for twenty-five hundred dollars; knew that the commissioners were about to levy taxes to pay judgments. Delap swears they were. They made Mr. Higinbotham believe that to get the money from the county it must appear that Baker had no interest, which accounts for Higinbotham not putting the declaration
228 of trust on record. Parks agreed to notify him if Higinbotham undertook to sell it. Parks saw Hulburd sell it and get a check or certificate for twenty-five hundred dollars; knew Hulburd did not claim to own it, as he admits he himself knew Higinbotham was in town; did not notify him when he knew his principal was being robbed, but took the assignment to Denver and filed it with the clerk, and all this was done by him while act-

ing for the county; and then he comes into this court and swears the judgment was only worth one thousand dollars, because he says Hulburd had twice made application for a mandamus to compel the levy of a tax which had been refused, when, as a lawyer, he knows that the refusal of those applications had nothing to do with the obligations of the county. Parks admits that there had been no decision or adjudication concerning the validity of Lake county warrants between the time Wood bought and the time the commissioners agreed to levy a tax to pay seventy-five per cent. of the judgment; and Wood, when being interrogated concerning the compromise, says that they were about to take steps to enforce payment, and the commissioners settled on the basis of seventy-five cents, which they have since paid to Wood—eighteen thousand six hundred dollars for three-fourths—making the value of the judgment, if all had been paid, twenty-four thousand eight hundred dollars ($24,800.00).

Higinbotham swears Parks wanted to purchase it a short time before and offered ten thousand dollars for it; that he told him Baker would not discount it much. This, Mr. Higinbotham swears, was in the presence of Seeley. Parks and Seeley are put upon the stand as witnesses in their own behalf. Seeley does not deny it, which he would have done if he could. Parks, upon counsel stating to him a long conversation testified to by Mr. Higinbotham, says, "Had no such conversation;" but Parks contradicts every one—Hulburd, Thomas H. Baker, Higinbotham, Reardon,
229 and Seeley—who swears Parks was as anxious to make the trade as any one, and told Seeley Hulburd owed him money. Still, according to Parks, he did not even know the trade was made, except as he found it out when Seeley so innocently asked him to get the assignment recorded, and so on to the end, showing a batch of absurd and contradictory statements, not one-half of which can be recited in this petition.

But one other fact is certainly important in this connection, which ought to bind the respondents and limit their rights to the exact position of Hulburd's rights, viz., the assignment by Hulburd to Wood, which is, "For value received I hereby sell," &c. What? "All of the right, title, interest, claim, and demand which the plaintiff, Lucien Baker, or I have of, in, and to the said judgment," &c. This was done at the same time that Hulburd told Seeley what that interest was. That was one transaction. He sells his interest and tells the purchaser what that interest is. If Parks was not there he ought to have been to protect the county and see to it that Mr. Hulburd conveyed the entire judgment to Mr. Wood. It is true that Mr. Hulburd says he conveys all of Lucien Baker's interest as well as his own. Hulburd either owned that judgment or he conveyed nothing. He had no more power to convey Lucien Baker's interest than he had — convey John Alford's interest, and both Wood and Seeley swear he did not convey Alford's interest. The very language of this assignment was notice that Baker had an interest.

Second. The court erred in the application of the doctrine of estoppel against the complainant and in favor of the respondents in this case.

The court, in Moore *vs.* The Metropolitan National Bank, 55 New York, 41, says:

"The question is thus presented whether a *bona fide* purchaser of a chose in action not negotiable from one to whom the owner
230 has transferred the apparent absolute ownership upon the faith of such ownership obtains a valid title as against such owner, although his vendor has not such title." And again says, page 46: "One reason why an owner of corporate shares or of goods and chattels who had conferred upon another the apparent ownership without transferring to him a valid title was held precluded from asserting his title as against a *bona fide* purchaser from such owner is that such purchase was made upon the faith of the title which he had apparently given, and that it would be contrary to justice and good conscience to permit him to assert his real title against an innocent purchaser from one conferred by him with all the indicia of ownership and power of disposition."

Another reason was that were the rule otherwise it would afford opportunity for the perpetration of frauds upon the purchaser from such apparent owner.

The respondents, then, must, before they can claim the benefit of estoppel against the complainant, show affirmatively that they are *bona fide* purchasers for value without notice, either actual or constructive, or without knowledge of any fact sufficient to put them upon inquiry as to Hulburd's right to sell this judgment.

Third. The court erred in holding that the respondents did acquire a title from Hulburd, notwithstanding Hulburd had no title which he could convey.

Fourth. The court erred in holding as matter of law that the title to the judgment passed, by reason of the estoppel against the complainant, to the respondents.

Fifth. The court erred in holding that the respondents were the owners of the entire judgment because, giving them the utmost benefit contended for under the law of estoppel, they could only charge the complainant with such estoppel to the extent of making them whole or, in this case, retaining the money they had paid to Hulburd.

Sixth. The court erred in deciding that the judgment belonged to the respondents and that the title of Baker passed to
231 the respondents by virtue of the estoppel against the complainant.

Seventh. The court erred in dismissing the bill without granting the relief sought or the portion thereof to which the complainant was equitably entitled.

Wherefore complainant prays that he may be allowed a rehearing in said cause and be permitted to reargue the same upon the questions of law and fact above presented, and that the decree herein may be vacated.

CLINTON REED,
Solicitor for Complainant.

(Indorsed:) No. 2042. In the United States circuit court. Lucien

Baker *v.* A. M. Hulburd *et al.* Petition for rehearing. Filed Jan. 17, 1891. William A. Willard, clerk. Clinton Reed, solicitor for complainant.

And afterwards and on, to wit, the 18th day of March, A. D. 1891, the same being one of the regular juridical days of the November term, A. D. 1890, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Petition for Rehearing Denied. Appeal Allowed.

LUCIEN BAKER
vs.
E. M. HULBURD, DANIEL E. PARKS, *et al.* } 2042. In Chancery.

Bill to cancel an assignment of judgment and for other relief.

At this day comes the said complainant, by Clinton Reed, Esq., his solicitor, and the said defendants, except the said defendant, E. M. Hulburd, by J. F. Vaile, Esq., their solicitor, also come.

232 And the petition of the said complainant for a rehearing of this cause, coming on now to be heard, is argued by counsel, and the court being now sufficiently advised in the premises it is ordered by the court, for good and sufficient reasons to the court appearing, that the said petition be denied.

And thereupon the said complainant prays an appeal from the decree of *of* this court to the Supreme Court of the United States, which is allowed him, conditioned that he file herein his bond conditioned according to law in said appeal in the sum of five hundred dollars ($500).

And afterwards and on, to wit, the 22d day of April, A. D. 1891, came again the said complainant, by his solicitor aforesaid, and filed in said court and in said cause his bond on appeal to the Supreme Court of the United States.

And the said bond is in words and figures as follows, to wit:

Bond on Appeal.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

Know all men by these presents that Lucien Baker, as principal, and Alexander A. Higinbotham, as sure*ties*, are held and firmly bound unto Samuel N. Wood, George Taylor, adm'r of the estate of N. P. Seeley, dec'd; E. M. Hulburd, & Daniel E. Parks in the full and just sum of five hundred dollars, to be paid to the said Samuel N. Wood, George Taylor, administrator of the estate of N. P. Seeley, dec'd; E. M. Hulburd, and Daniel E. Parks; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

233 Sealed with our seals and dated this 31st day of March, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at the November term, A. D. 1890, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between Lucien Baker, complainant, and Samuel N. Wood, George Taylor, administrator of the estate of N. P. Seeley, dead, and E. M. Hulburd and Dan'l E. Parks, defendants, judgment was rendered against the said Lucien Baker dismissing his bill of complaint and for costs, and the said complainant, Lucien Baker, having prayed and been allowed an appeal from the judgment and decree aforesaid to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said Lucien Baker shall prosecute said appeal to effect and answer all damages and costs if he fails to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

LUCIEN BAKER. [SEAL.]
ALEXANDER A. HIGINBOTHAM. [SEAL.]

Approved April 22nd, 1891.
MOSES HALLETT, *Judge.*

(Indorsed:) Gen. No., 2042. Circuit court of the United States, district of Colorado. Lucien Baker *vs.* Samuel N. Wood *et al.* Bond on appeal, $500.00. Filed this 22nd day of April, A. D. 1891. Robert Bailey, clerk, by F. W. Tupper, deputy clerk.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

234 I, Robert Bailey, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore filed or had and entered of record in said court and in a certain cause lately in said court pending, wherein Lucian Baker was complainant and Samuel N. Wood, Daniel E. Parks, and George H. Taylor, administrator, etc., were defendants, as fully and completely as the same still remains on file or of record in my office, at Denver.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 23rd day of April, A. D. 1891.

[Seal United States Circuit Court, District of Colorado.]

ROBERT BAILEY, *Clerk.*

Endorsed on cover: Case No. 14,639. Colorado C. C. U. S. No. 1166. Lucien Baker, appellant, *vs.* Samuel N. Wood, George Taylor, administrator of N. P. Seeley, deceased; E. M. Hulburd, & Daniel E. Parks. Filed May 13, 1891.

752
13-7-212
13-7-212
SEP 15
JAMES H. McKENNEY,
CLERK.

IN

The Supreme Court

OF THE

United States.

LUCIEN BAKER,
Appellant,
vs.
E. M. HULBURD, N. P. SEELEY, SAMUEL N. WOOD AND D. E. PARKS,
Appellees.

BRIEF OF APPELLANT.

HENRY M. TELLER,
CLINTON REED,
Solicitors for Appellant.

C. J. KELLY, PRINTER, DENVER.

IN

The Supreme Court

OF THE

United States.

LUCIEN BAKER,
Appellant.

vs.

E. M. HULBURD, N. P. SEELEY, SAMUEL N. WOOD AND D. E. PARKS,
Appellees.

BRIEF OF APPELLANT.

The history of the above entitled case and the facts connected therewith are that on the 12th day of November, 1883, the appellant, Lucien Baker, recovered a judgment in the United States Circuit Court for the District of Colorado, against the County of Lake in the State of Colorado, for the sum of $16,054.27. In this suit, the defendant, E. M. Hulburd, was the attorney for the plaintiff, and Daniel E. Parks, another of the defendants, was attorney for the County of Lake. Some time there-

after, the plaintiff and appellant in this suit instituted proceedings in the nature of a mandamus in the Circuit Court to compel the payment of the judgment, but, on account of the amount of taxes that had already been levied in that County, the Court refused to order the County to levy a tax, and the judgment stood unsatisfied and in full force and effect against the County of Lake until about the 20th day of May, 1886. Considerable negotiation had been carried on up to that time concerning the settlement and payment of the judgment by the county, but the county had never undertaken to pay it, and had shown a disposition not to pay it until such a time as it was compelled so to do. About this time the two attorneys above named—Parks and Hulburd—entered into a combination or conspiracy, as is alleged in the bill, to procure the assignment of this judgment to some other person, who, it was pretended, could effect a settlement and collect the same from the county. Hulburd thereupon applied to Mr. Higinbotham, who was then and at all times had been the agent of the plaintiff in the prosecution of this suit, and under the pretense that, by making an assignment of it to Hulburd, Hulburd, with the aid of Parks, could procure a levy of a tax to pay it. The appellant, on the recommendation of Higinbotham, made the assignment of the judgment to Hulburd, taking, at the same time, an agreement from Hulburd that this assignment was for the purpose of collection, and that if he failed to collect it he would reassign the judgment to appellant. This assignment was delivered to Hulburd, and by Hulburd delivered to Parks, who procured the same to be filed with the

papers in the Circuit Court on or about the 11th day of April, 1886. About that time or between that time and the 17th day of April, defendant Seeley, acting for himself and defendant Wood, procured from Hulburd an assignment of the judgment to defendant Wood, for the sum of $2,500, and paid therefor by a draft upon Wood, who was a banker residing and doing business in Denver. Hulburd took this money, and within a few days disappeared from the State, and never accounted to the plaintiff for any portion of the proceeds of the sale. It is claimed by appellant, and, in fact, it is conceded in the case, that the sale of the judgment by Hulburd to Seeley and Wood was a fraud upon the appellant, and appellant also contends, contrary to the purposes of the assignment, that the defendants Wood and Seeley had notice of the fraud that was being perpetrated upon the plaintiff, and that they were, in fact, interested in and parties to the transaction. The knowledge of the sale of the judgment by Hulburd to Wood did not come to Higinbotham, the agent of the plaintiff who was then in Leadville, in Lake County, for some days thereafter, and until after Wood for himself and Seeley had paid this money to Hulburd and Hulburd had left the country. Thereupon, when plaintiff was informed of the pretended sale and transfer of the judgment, and in the month of July he called upon Wood and told him that Hulburd had no right to sell the judgment. (See Hig., page 36; Baker, page 21.) That it was not his; that it was only in his hands for collection. Wood refused to talk with him about it, saying that he had taken legal advice upon the subject before he

bought it; that he had bought the judgment, and that it was his, and that the plaintiff could not get it except at the end of a law-suit, and that if he wanted a law-suit, to pitch in. Thereupon this suit was brought, charging in the bill a conspiracy between Wood and Seeley and Parks and Hulburd, the defendants, to defraud the plaintiff of his judgment. The defendants Wood and Seeley seek to protect themselves in the purchase of this judgment as being *bona fide* purchasers for value and without notice of the fraud, and upon the hearing in the Court below the honorable Judge of the Circuit Court adopted that view of the case and dismissed the plaintiff's bill solely upon the ground that the plaintiff, having entrusted Hulburd with the assignment of that judgment and the apparent ownership of it, was estopped from asserting any interest contrary to the sale and assignment of the same by Hulburd. The appellant insists that the Court erred in holding that Hulburd could convey any greater interest in the judgment than he owned, and that the only interest that passed by the assignment of Hulburd and Wood was such equitable title to the judgment as Hulburd had, and that the defendants Seeley and Wood were bound by the contract between Hulburd and the plaintiff that he should reassign the judgment in case he failed to collect it. That neither Seeley nor Wood were *bona fide* purchasers in good faith. First, for the reason that there was no pretense on the part of Hulburd that he owned the judgment, he having told Seeley that his interest in the judgment was simply a claim for fees (see testimony of Seeley, page 102), and therefore they were not

purchasers in good faith or without notice. Second, they paid only $2,500 for a judgment which amounted at that time, with interest and costs, to the sum of about $24,000. They were not purchasers for value in the sense required to invoke the application of the doctrine of estoppel. Further, that the Court erred in its application of the doctrine of estoppel by holding that the title to the judgment and the entire judgment passed to the purchasers by the estoppel, the rule being that it could only operate as an estoppel upon the plaintiff to the extent of reimbursing the defendants Wood and Seeley for the money that they had paid to Hulburd. Appellant insists also that the Court erred in holding that the judgment passed by the assignment to Hulburd when the assignment by Hulburd only purports to be of such interest as he had in the judgment, he not pretending to transfer or assign to Wood the entire judgment or the title thereto. See assignment, page 59 of Record.

The law is well settled, we believe, that the assignee of a judgment at common law has no title to the judgment assigned that could be enforced in a Court of law in his own name. He is the owner simply of an equity and takes this equity subject to the equity of any previous owner or assignee. There is no statute in Colorado permitting the assignment of a judgment, or provision of any statute whereby the title to the judgment is vested in the assignee. The only means that the assignee has of enforcing a judgment in his own name is the bringing of a suit thereon under the provision of the Code of this State requiring suit to be brought

in the name of the real party in interest, whether his title be an equitable title or a legal title.

To the point that the assignee takes such title as assignor had, we call attention to the following cases:

Davis vs. Austin, 1 Vesey, 247.

Lord Thurlow says that a purchaser of a chose in action must always abide by the case of the person from whom he buys.

Cluet vs. Robinson, 2 Johns. Reps., 595.
Murrey vs. Lilburn, 2 Johns. Ch., 441.
Ingram vs. Disborough, 47 N. Y., 422, 535.
Bush vs. Lathrop, 22 N. Y., 229.
Cutts vs. Gould, 57 N. Y., 229.
Hallett vs. Collins, 10 How., U. S. star paging, 185.
Freeman on Judgments, Sec. 421 *et seq.*
Fore vs. Manlove, 18 Cal., 437.
Mitchell vs. Hocket *et al.*, 25 Cal., 539.
Burton vs. Cook, 16 Iowa, 200.
Willis vs. Twombly, 13 Mass., 204.
Padfield vs. Green, 85 Ill., 529.

William Rea vs. George W. Forrest, 88 Ill., page 275, is the case of an assignment of a judgment. This judgment was obtained by fraud, and the only interest that the judgment creditor had in the judgment was the sum of $300. The judgment for a thousand dollars was simply held as collateral security, and the Court used the following language: "No Court of equity can tolerate such a proceeding as that. Appellant was fully aware of the judgment and the circumstances under which it was obtained. Forrest had no notice of the entry of the judgment, and after he lost his col-

lateral had no reason to anticipate that judgment would be taken on the note. Without deeming it necessary to enter into any elaborate discussion of the facts and legal principles applicable, we think it sufficient to simply declare, as our conclusion, that, under the facts proved, the judgment was fraudulent and void as against Forrest, and consequently appellant, as assignee, either with or without notice, is entitled to occupy no more favorable position than Smith would occupy, were he attempting to enforce it through a Court of equity."

The principle declared in this case, it seems to us, is the same as the one at bar, namely, that the assignee of the judgment, either with or without notice, stands in the same position as his assignor, for the reason that the assignee of the judgment has only an equity in the judgment and is not the owner of the legal title, and, therefore, having only an equity, it cannot prevail against the prior equity of the assignor. This rule, of course, would not prevail if there was any provision of our statute providing for the transfer of the legal title to the judgment to the assignee.

To the same point (that the assignee stands in the same position as the assignor) is the case of Jordan vs. Block and Harnibleau, 2 Murphy, N. C., page 30.

Most of the cases above cited are from States where the Code provision is in force, that the real party in interest may bring the suit, and in none of them is it decided that that provision of the Code in any manner warrants the assumption that the title of a non-assignable chose in action vests in the assignee. It follows, then, that if such is the

law, that the assignee of Hulburd, it being shown that Hulburd fraudulently procured the assignment to him, acquired no right or title by virtue of the assignment, and this position is not controverted by the defendants or by the Judge of the Circuit Court, but they insist that the conduct of the appellant in executing and delivering this assignment was such as to induce Seeley, acting on behalf of himself and Wood, to purchase the judgment, and that it is a fraud upon Wood and Seeley for the plaintiff to assert his title, and they invoke also the equitable principle that when a loss must fall upon one of two innocent persons, that one must bear it through whose act it was occasioned, and that it is through the act of appellant in making this assignment to Hulburd that the two innocent persons, Seeley and Wood, will suffer a loss.

The facts in this case, we think, are entirely inconsistent with the position of the defendants.

In the first place, Hulburd, one of the defendants, says, in his testimony, that he went to Higginbotham, the agent of Baker, and told him that he could get the board to levy a tax if it was assigned to him, and that Parks would recommend it if the judgment stood in his (Hulburd's) name, but that there was such a prejudice against Higinbotham and Baker, that the board would not pay it. We also have the admission of Hulburd, in his testimony, that he procured the assignment of the judgment for the purpose of appropriating the money to his own use (page 86). That his sole object was to get this money. He was willing to do anything that Parks required. (See testimony of Hulburd, pages 85 and 86.) We have the testi-

mony of Seeley, another of the defendants, and the purchaser of the judgment for himself and Wood, that Hulburd offered him the judgment for fifty or sixty cents on the dollar; that he so informed Wood, and that Wood said, "Why not buy this judgment?" That he told Wood that Hulburd talked too much. That Seeley then went to California, and the morning after his return he met Wood, and Wood told him that he had just closed the trade for the judgment, but that he had taken time to look the matter up and see if there was anything wrong in the matter. Seeley said that he went to Leadville to look the matter up and find out if there was anything wrong, and that if he found there was nothing wrong, to pay $2,500 and take the judgment, and Seeley says that Wood told him that he had agreed to pay that for the judgment. (See testimony of Seeley, pages 101, 102 and 103.) Wood swears that he had never seen Hulburd, and when he is on the stand as a witness he says that he never had any negotiation with Parks, and finally says that the only person who acted as his agent in buying the judgment was Seeley, and that Seeley was buying it for himself and Wood. That is undoubtedly the fact. They had been negotiating and talking about buying this judgment, and intended to buy it if they could get such a title from Hulburd as would enable them to hold it. We have Seeley's statement that he went to Leadville to find out if there was anything wrong, and if there was not, to pay $2,500 for a $24,000 judgment. Of course, Seeley or any one else would naturally suppose that there was something wrong

about it when a man offered a $24,000 judgment against one of the wealthiest counties in the State of Colorado for $2,500. It would naturally, as it did, put them upon inquiry; and Seeley went to Leadville to inquire, and then Seeley says that when he got to Leadville nobody knew he was there quicker than Hulburd. Seeley says he wanted money. All of which confirms Wood's statement to Seeley that he had bought it and agreed to pay $2,500 for it if there was nothing wrong, but it is not disclosed through whom Wood acted when buying it. Seeley says he had to look around; telegraph back to Denver to the Clerk to see if the assignment was recorded, and then went to work to see if there was anything wrong. Higginbotham, the agent of the plaintiff, was there, but Seeley did not go to see him, although Hulburd then and there told him that Higginbotham and Barnes owed him, and that he was selling Lucien Baker's judgment to get the money that Higginbotham and Barnes owed him. Seeley says, "I asked Hulburd in so many words, before witnesses, Now, you know you are a little uncertain, and I want you to tell me if there is anything or any reason on earth why you have not full power to sell this judgment, and whether it is not yours." Hulburd said it was his to the extent that Higginbotham and Barnes had not paid him and that Barnes settled with him out of this judgment. They had always promised that out of this he should be paid (Seeley, page 102). Thus the very information that Seeley was seeking, and which he then and there got from Hulburd, the other defendant,

the man who was selling the judgment, that it was not his in reality. Hulburd did not even pretend that he owned any interest in it except that he was to be paid his fees out of it, nor does Hulburd, according to Seeley's testimony, pretend that Baker owed him any fees. He says that Higginbotham and Barnes had promised to pay him out of this judgment when the money was collected, not when he (Hulburd) sold it for $2,500, and then Seeley says, "I thought it looked like a gamble (Seeley, page 103)—that the judgment against Lake County was like an interest in a goose pasture." When Seeley was asked if Parks had anything to do with it, he said, I think he was agent. Always thought he was in with Hulburd and got part of the money, and on being asked if Parks was Wood's agent, said, "I cannot say. I was in California part of the time. Parks was as anxious to make the trade as anybody." Was Seeley then an innocent *bona fide* purchaser without notice that Baker had any interest in that judgment? Hulburd tells Seeley, when he asks him if it is his judgment, that it is not. And when Hulburd comes to make the assignment on that date to Wood, he does not pretend to transfer the title to the judgment—does not undertake to sell it as the owner.

The language of the assignment is as follows:

"For value received, I do hereby sell, assign, transfer and set over to S. N. Wood, of Denver, Colorado, all of the right, title, interest, claim and demand which the plaintiff, Lucien Baker, or I, have of, in and to the said judgment above described, a transcript of which is hereto annexed,

and authorize and empower him, the said assignor, to collect the same at his own proper cost and expense.

(Signed,) E. M. HULBURD."

(See page 60.)

Anyone, from the form of this assignment, would say that Hulburd was undertaking to assign that judgment as the attorney and agent of Lucian Baker, and including therein any interest that he might have for the fees which he was to have out of it, but there is no pretense that Hulburd had any power to assign this judgment as the attorney or agent of Baker, or that he ever, in dealing with Seeley or Wood, claimed to sell it as the attorney or agent of Baker.

Concerning the doctrine of estoppel, we quote from the opinion of Justice Story, in the case of Hill *et al.* vs. Epley *et al.*, 31 Pa. Stat., page 333.

The Judge in that case says: "The doctrine of equitable estoppel, by matter *in pais*, has doubtless been greatly extended by the Courts in modern times, yet it is not entirely without limits, and it professes to be founded upon the principles of natural justice. The general principle now is that where the conduct of a party has been such as to induce action by another, he should be precluded from afterwards asserting, to the prejudice of that other, the contrary of that of which his conduct has induced the belief. The primary ground of the doctrine is that it would be a fraud in the party to assert what his previous conduct had denied, when on the faith of that denial others have acted. The element of fraud is essential, either in the in-

tention of the party estopped, or in the effect of the evidence which he attempts to set up.

The case of Kearney vs. Vaughn, 50 Mo., is a case similar to the one at bar. The plaintiffs claimed to be innocent purchasers for value, they having obtained the deed from one McCoy, who held the legal title to the property; McCoy informed them that he did not own the equity, but the legal title. Here Hulburd informed Seeley that, while he had the legal title by virtue of this assignment, he was not the real owner of the judgment, but had been promised by third persons, not in any way connected with Baker's title, that he was to be paid certain fees out of this money when it was collected.

The case of Auten vs. George Gruner, 90 Ill., 302, was a case of a negotiable note, which was apparently for $10, but, by tearing off part, it left a contract, obligating him to pay $300. This note was purchased by a banker, who set up the defense of estoppel to the allegations of the former that it was procured by fraud.

The Court held that the bank was not a *bona fide* purchaser for value, for the reason there was suspicious circumstances enough to warrant an inquiry by a cautious person, and the suspicious circumstance was the offering of the note of a farmer in the vicinity—and well to do—at a large discount.

International Bank vs. Herman Bank, 3 Mo. Appeals, 362, was a certificate of deposit, payable to the order of one Boecke, which he endorsed in blank and deposited for safe keeping, and as collateral security for two loans. The loans were paid, but the People's Bank

transferred the certificate and it came into the hands of the German Bank. The certificate was not payable to order, and the Court held that the principle of estoppel did not apply, although it was claimed that Boecke, by putting it in the power of the People's National Bank, who represented itself as owner of the certificate, to mislead a purchaser, is estopped to deny the title of those who took it in good faith.

The Court distinguishes some of the New York cases that are relied upon by defendants in this case on the ground that certificates of stock, deposited as in the New York case, passed current like bank notes, while the certificate of deposit was non-negotiable, and, therefore, the estoppel did not apply.

The case of Moore vs. Metropolitan Bank, 55 N. Y., ———, relied upon by defendants in this case, and cited and approved by his Honor, Judge Hallett, was one of the cases commented upon by the Court of Appeals, in the case above cited, and the Court says that, while that might be true of a certificate of stock, it is not true of non-negotiable choses in action.

The case of Major vs. Buckley & Peacher, 51 Mo., 220, is also in point. It was there claimed that, because no one had informed Peacher of the fact that the purchase money was unpaid and because he did not happen to have actual knowledge of it, the Court finds that he had no notice, and says it was a maxim of universal recognition in equity jurisprudence that he who takes with notice of an equity takes subject to that equity, and that notice, in this connection, does not mean

positive information brought home to the party, but any fact that would put an ordinary prudent man upon inquiry is notice.

To the same point is the case of Eyerson vs. Eldred, 23 Mich., 538.

The case of Warner vs. Sweat, 31 N. H., 333, decides that, if facts exist such as should put a party upon inquiry, he is bound to inquire, and, if he neglects to do it, he will be chargeable, constructively, with what he might have learned upon examination.

Newt vs. Newt, 41 N. H., 60, is to the same point.

The case of Canajoharie National Bank vs. Defendorf, 123 N. Y. Court of Appeals, 191, is the latest case decided by that Court upon the question of what is sufficient notice in a case like the present.

There the plaintiff claimed that it was a *bona fide* purchaser of a negotiable promissory note before maturity, paying value therefor, and that although the same was obtained by fraud, it was entitled to recover in the absence of proof showing it had notice or knowledge of the fraud in the procuring of the note from the maker which constituted a defense to the action. The Court says: "The plaintiff's contention eliminated the element of good faith from the transaction and assumes that the language 'a holder for value,' as used by the authorities, is satisfied by proof that the notes were purchased before maturity and value paid therefor. We think this contention is contrary to the weight of authority in this State, though not wholly unsupported by it. The payment of value for negotiable paper is a circumstance to be taken into

account with other facts in determining a question as to the *bona fides* of a transaction, and when full value is paid is entitled to great weight. But that fact is never conclusive except in the absence of evidence tending to show notice.

Those who seek to secure the privileges which the commercial law confers upon the holders of bank bills or negotiable paper must bring themselves within the condition of that law previous to the establishing of the character of a *bona fide* holder. They are entitled to the protection of that rule when they have purchased such paper in good faith in the usual course of business before maturity for full value and without notice of anything affecting the validity of the paper. This has been the law in this State since the case of Bay vs. Coddington, 5 Johns. Chan., 54; 20 Johns., 636. The fact that they took the paper before maturity and paid the full value thereof in the absence of other facts undoubtedly authorizes a presumption of the good faith of the transaction, but where it further appears that such paper has been fraudulently or illegally obtained from the owner or maker, and under such circumstances that the person buying and putting it in circulation could not maintain an action thereon, it is incumbent upon the holder, in order to succeed, to go further and show the circumstances under which it came into his possession, and that he has acted in good faith in the transaction.

The case of Baker vs. Bliss (39 N. Y. Court of Appeals, page 70) was the purchase from a married woman of certain property of which she claimed to be the owner, and was not, in fact, the owner of the

property. The Court says, after commenting on some of the circumstances of the case, which are not as suspicious as in the case at bar, "We think he, the purchaser, was clearly bound to make inquiry of the question in regard to the title and upon the grounds upon which suit had been commenced and injunction issued. If he had made the inquiry, it would undoubtedly have led to the revelation of the fact that the husband, and not the wife, was actually owner of the property." Apply that rule in this case. Suppose that Seeley had made inquiry of Higinbotham, the agent of the plaintiff, residing in Leadville. He would inevitably have found that the transfer to Hulburd was simply for the purpose of collection. In the case cited, Woodruff says (on page 78) "that the purchaser knew before he bought from Mrs. Bliss that the premises had been purchased from Hill and wife, and that I. G. Johnson, residing in the same village with himself, acted as attorney of Hill and wife in the sale." Seeley knew the same thing with reference to Higinbotham.

In the case of Smith vs. Vreeland *et al.*, 1 C. E. Green, 16, N. J. Equity, 201, the purchaser relied upon the doctrine of estoppel, but the Court refused to apply that doctrine, upon the following grounds, saying:

"The principle is equally clear that, if he purchased with actual or constructive notice of the fraud, he takes title subject to all equities which it was liable to in the hands of the vendor."

And in the case of Call vs. The Mayor of Jersey City, 23 N. J. Equity, 8 C. E. Green, 84, where very many of the leading cases on the

question of estoppel, both concerning real estate and negotiable instruments, are examined and commented upon, the Court say:

"I take the doctrine by the decided weight of authority to be that there must be an intention to influence the conduct of the person purchasing, or that it must be so apparent that the representation will have that effect and the intention presumed."

Another element of notice in the case at bar seems to be important, and that is the price paid for the judgment. That of itself seems to be sufficient to put any man, whether prudent or otherwise, upon his guard, and, in fact, in this case it did, according to the testimony of Seeley and Wood, put them upon their guard. They say they were afraid there was something wrong, and the rule above quoted is that when their suspicion is excited so as to lead them to inquiry, they are charged with notice of every fact that diligent inquiry would have disclosed. Upon this point see De Witt vs. Perkins, 22 Wis., 452—a case on a promissory note in the hands of a so-called *bona fide* holder for value, who claimed the protection of such a holder. The Court says that the amount paid is evidence of bad faith. Lay vs. Wiseman, 36 Iowa, 336, while not a case exactly in point with the one at bar announces the same principle.

To the same point is the case of Traphagen *et al.* vs. Lyons *et al.*, 38 New Jersey Equity, page 613; 20 Ind., Robeson vs. Roberts *et al.*, page 155; 24 Ind., Case vs. Brunstead *et al.*, page 431; 30 Ind., Wilson vs. Hunter, page 471.

To the point that the purchaser who makes inquiry as to the title of the assignor and is bound

by whatever that inquiry would have disclosed, is the case of Leonard's Appeal, 94 Pa. State, page 168; Nute vs. Nute, 34 N. H. P., 60.

In Converse vs. Bleumrich, 14 Mich., page 120, the Court says: "A person is charged with constructive notice where, having the means or knowledge, he does not use them. If he has knowledge of such facts as would lead any honest man, using ordinary caution, to make further inquiries, and does not make those inquiries, but, on the contrary, studiously avoids making such inquiry, he must be taken to have notice of those facts which, if he had used ordinary diligence, he would have readily ascertained."

It was insisted on behalf of appellant in the Circuit Court—and we make the same point now—that, conceding Seeley and Wood were *bona fide* holders for value of the judgment, and that they were in a position to assert the doctrine of estoppel as against appellant, they were only entitled to retain out of the money collected by Wood from the county upon that judgment the amount of money they had actually paid Hulburd for the judgment. If it is true that the doctrine of estoppel *in pais* is an equitable estoppel and can only be invoked to protect a purchaser from loss on account of the act of some prior party, there is no reason in extending the estoppel beyond what is necessary to protect the purchaser from such loss. As we have seen before, the title did not pass. Much less can a title pass by estoppel, except a technical estoppel. If the title did not pass, then they have no right to the judgment, but simply by virtue of the estoppel they have

a right to be reimbursed the money they have paid out. Therefore, it was error in the Court below to dismiss the bill, and the most that the Court could have decreed was that, upon the payment of $2,500, the assignment should have been set aside. Upon this point, the case of Allaire vs. Hartshorne, 21 N. J. Law, 1 Zabriski, 665, the Court say:

"As between the original parties, the note is worthless. It was given for a specific purpose and misappropriated. The payee could not recover, but Hartshorne, as a *bona fide* holder for value without notice may recover the amount due upon the note; but should he have judgment for the surplus beyond his claim? If he ought, then, by the judgment of this Court, Allaire is compelled to pay money which it is conceded he is not bound in law to pay, and which is due to no one. The justice and right of the case manifestly require that judgment shall be rendered only for the amount actually advanced on same to Allaire. In the case of Holcomb vs. Wichoff (6 Vroom, N. J.), the above case is referred to and approved, the difference in the two cases being that in this case, the notes were purchased by one Price, for a valuable consideration. In the former the note was deposited as collateral, and the Court say "that to make a note salable by the holders so as to give the purchaser right to enforce it for its face, the note must be perfect and available in the hands of the seller as against the maker, and the test of its availability in his hands is his right to maintain an action on it against prior parties at the time of the transfer, assuming it then to have been due·

In the case of The Phillipsburg Bank vs. Fulmer (31 N. J. Law, 2 Vroom, 53), the Court say, "Salutary as is the doctrine of estoppel *in pais* as a preventive of fraud when confined within reasonable limits, no case has ever gone so far as to render a man liable to pay a debt of $2,000 which he did not owe because, in consequence of his false statement that he did owe it, a suit was commenced against him, a failure to sustain which would throw the costs on the plaintiff. To constitute an estoppel *in pais* there must be an admission intended to influence the conduct of another as to materially injure him, if the party making it is allowed to retract it. And the estoppel must not be carried beyond the limits of the injury, so as, instead of preventing an injury, the enforcement of which will produce a greater injury than it was intended to prevent.

In the case of Peabody vs. Fenton, 3 Barb. Chancery, page 463, the Chancellor says:

"If they were entitled to protection, therefore, as *bona fide* holders and purchasers without notice, they, or those to whom they procured the transfer to be made in payment or security for an antecedent debt, could not in equity be permitted to retain the bond and mortgage for the full amount due thereon, but only to the extent of the value of the property which was paid for the same."

In the case of Stockton vs. McDonald, 6 Hill (N. Y.), page 93, where the question of the rights of a *bona fide* purchaser for value of negotiable paper was involved, the Court says:

"It has been uniformly held by the Courts of equity in such case that the purchaser who has ob-

tained the legal title as a mere security on payment of a pre-existing debt without parting with anything of value is not entitled to hold the property as against a prior equitable owner. *And if he has paid but a part of the consideration or value of the property, he is only entitled to be considered as a bona fide purchaser pro tanto.*"

Again in the same case it is said if the estoppel could be so used as merely to charge the defendant with costs, or if it was sought to be applied merely to prevent the plaintiff being turned around to another form of action, it would be a legitimate use of it, but so to apply it as to charge the defendant with a large sum of money he does not owe, which, if the principle is correct, might as well be $20,000 as $2,000, to save the plaintiff a few dollars of costs is to make it the means of working, and not preventing a serious injury.

In the case of The Chicopee Bank vs. Chapin, 8 Met. Mass., page 40, the plaintiff was held to be the *bona fide* holder of a note sued on, which was fraudulent as between the original parties, the Court having held that the plaintiff was a *bona fide* purchaser without notice. Still, he could recover only so far as a holder for value—that is, the amount for which they took the note in suit as collateral security. The same point in the case of Simpson vs. Delhoyo, 94 N. Y., Court of Appeals, page 193, a suit to foreclose a mortgage against Delhoyo to secure a note executed by the fraudulent grantee of Delhoyo and an innocent purchaser. The Court says: "Mrs. Delhoyo seems to have been greatly wronged, and should have all the relief any rule of

law can give her without violating the rights of any person equally innocent with her."

In Herman on Estoppel, Sections 360 to 390, it is said that an estoppel can only be set up to prevent an injustice. The same Pomeroy Equity, Section 813, title Estoppel.

If the law is correctly announced in the foregoing cases, how can it be said that the defendant Wood is entitled to retain any more money than he paid Hulburd? It is true that in some of the cases above cited the plaintiff was the holder of a note for a specific purpose—that is, as collateral security—but that cannot change the principle nor avoid the effect of the equitable doctrine of estoppel, for it is applied only for the prevention of an injustice. The whole purpose of the doctrine is to prevent injustice between the parties. Can the defendants Wood and Seeley be heard to say it is true that we have the property of the appellant for which we have paid a small portion of its value? Wood has already received over $18,000 on his investment of $2,500, and proposes to keep it all because the title to that judgment passed to him by the estoppel. He relies upon what he supposes to be a technical right to the property of the appellant, and then invokes the aid of the equitable doctrine.

The only testimony in the case that defendants rely upon to show that they were *bona fide* purchasers of the judgment, without notice and for a valuable consideration, is the testimony of defendants Wood and Parks, and this, we contend, when taken together, strongly tends to show that both Seeley, Wood and Parks were acting in collusion,

and had knowledge of such facts in connection with the transaction as precludes them from claiming to be purchasers for value or without notice. Wood says (page 133) that "Seeley acted for him in the purchase of the judgment"; that "Seeley drew on him and Rollins and Young for the $2,500, and that Seeley was at that time connected with Rollins and Young in business." Therefore, whatever was notice to Seeley was notice to both him and Wood and Rollins and Young, and any other person interested in the purchase, and it can make no difference that Wood collected and held and now holds, if such is the fact, the money paid by the county upon the judgment. Wood says again (page 134) that "he had the records examined by Wolcott & Vaile, his attorneys, to see if it was a good judgment; that they advised him that it was a legal judgment." Now, this was before it was assigned to Hulburd (see pages 139 and 140 of Wood's testimony). That is all the investigation that Wood made prior to the time of sending Seeley to Leadville, unless he talked with Parks about it, which he does not seem to be willing to admit. They all seem to understand that they must admit no connection with or knowledge of the doings of this man Parks, for the reason, which is apparent from the Record, that Parks knew all about the alleged purpose for which the assignment was procured. As before stated, Wood talks about the purchase, and has this examination made by Wolcott & Vaile before Seeley goes to Leadville. He must have talked with somebody about it, and the only person that he can be induced to remember that he did talk with about it is Parks. "Yes, he must

have talked with him some place — perhaps on the street." He will not say how much he talked or what he said. Parks admits also that he may have spoken to Mr. Wood about it, but they both say Parks was not the agent of Wood in procuring this assignment. The only inquiry Mr. Wood made of Wolcott & Vaile was as to the validity of the judgment as a claim against the county. They informed him that it was a valid and legal judgment, but he says himself that he never consulted them after the assignment to Hulburd. (See Wood's testimony, page 140, of the Record, *et seq.*) If he was not anxious for this judgment, why did he have the validity of it examined by his attorney? He has stated in his answer that Hulburd was offering to sell it at different banks, and says the same thing in his conversation with Baker. When he comes to testify about it, he says that he did not know Hulburd—never spoke to him, and nowhere in his testimony does he admit that he knew anything about it, except from conversations with Parks. Still, he tells Seeley when he comes back, so Seeley says, "that he had decided to buy it, but that he had not closed the trade by paying the money." Wood does not contradict this statement of Seeley's when asked upon the stand if such is a fact—does say that he did not tell Seeley this, but says, "That is a mistake. I had not bought it." That does not contradict Seeley's statement as to what he told him. When pressed concerning these matters on his cross-examination, he says "he does not remember." That is a very remarkable statement for the Cashier of a bank to make who has been trying to buy and been

negotiating for the purchase of this judgment for months; has been seeking the advice of counsel as to whether the judgment is a legal claim against the county or not, and cannot remember with whom he made or tried to make the trade, and says he would not swear that it was not Parks. His testimony is remarkable more in what he does not know than in what he does know. In fact, the inference is almost irresistible, from what Wood himself says, that he did make this bargain and had these talks and negotiations with Mr. Parks, and it matters not whether he calls Parks his agent or whether he was his agent in fact for the purchase of this judgment, he is bound by what Parks knew. Parks was also sworn as a witness for the purpose of proving that, so far as Wood was concerned, the purchase was *bona fide*, for full value and without notice. His testimony is less satisfactory than the testimony of Wood. Counsel for defendant, instead of trying to prove what Parks does know or what he did say, reads to him from the testimony of Mr. Higinbotham and Mr. Hulburd, and then asks him if he said that, or if he did that, or if any such conversation occurred, and if any such conversation of that kind occurred, the time and place mentioned by counsel, to which he says either "no," or, "that he has no recollection of such a conversation." He seems to be impressed with the idea that it is important that he should appear in this case officially as representing the County of Lake. Still, some of his admissions are significant. He says (page 107) "that the county was averse to paying this judgment while it was in Baker's name." This is precisely the story used by Hulburd to ob-

tain the assignment from Baker. The reason the County Commissioners were averse to paying the judgment, he says, "was that Higinbotham and Barnes had, at some time, injured the credit of the county by their manner of dealing with the county securities, and both he and Hulburd say that they had concocted that scheme. It was, to be sure, a most flimsy pretext, which, one would suppose, a man of good judgment and any discrimination would have seen through, but it must be remembered that E. M. Hulburd was at that time an attorney and in good standing as such in this Court—was the attorney of the plaintiff in this suit, had prosecuted the case to a successful issue, and had at all times demeaned himself toward the plaintiff in a proper manner and shown a desire to collect the money for his client. His client and Mr. Higinbotham, Baker's agent, relied upon him and trusted him, and were disposed to do as he advised, and no Court has ever, to our knowledge, held that a man was guilty of gross negligence in placing a judgment, note or other evidence of indebtedness in the hands of his attorney for collection. This is the usual way of doing business. But the Judge of the Circuit Court, in deciding this case, among other reasons for invoking the doctrine of estoppel, urged that it was negligence in the plaintiff to have trusted his attorney with that judgment for collection. Parks says (page 108) "that he told Hulburd that if he could get the judgment assigned to himself, he (Parks) would help him to get the Commissioners to levy a tax to pay it. And he did this because he felt kindly towards Hulburd and wanted to aid him to get

the fees in the case." Hulburd swears (page 86 of the Record) that the representations made to Higinbotham were considered and talked over between himself and Parks prior to their having been made to Higinbotham. Again, on the same page, he says: "Parks had full knowledge that an assignment was made to me without consideration, and knew that I was acting clandestinely, illegally and willfully against the interests of my client, and knew that it was my intention to appropriate what money I received to my own use." Again, he says "that Mr. Parks told Mr. Seeley that the assignment was all right at the time that Seeley gave him the check for the money." Parks denies this, of course, but he admits that he looked after the form of the assignment; that Hulburd submitted it to him; that he passed upon its sufficiency—directed just how it should be executed (page 109 of Parks' testimony). The reason he gives for having so much to say about it is that he was solicitous for the interests of the county of Lake, and, as its attorney, would not recognize any assignment that he did not approve. Here was a contract according to the defendants' notion of this case, by which parties entirely unconnected with the county, and not interested in the welfare of the county—simply bent on purchasing its obligations as low as possible—dealing with Hulburd, the agent of the owner of the judgment. It was absolutely immaterial to the county whether these parties dealing with that judgment made a valid or invalid contract. It was something in which they had no interest, but the County Attorney—this friend who was looking after the interest of

Seeley and Wood, whether he admits that or not, was so much worried about their making a binding contract that he had to examine the assignment, the form and substance, and direct how everything should be done, and still comes upon the stand and swears that he was doing this simply on account of the county. His zeal abates considerably after the assignment has been executed and delivered to Wood or Seeley and the money paid. The plaintiff is informed of it. He goes to the meeting of the Board of County Commissioners before they have levied any tax for the payment of this judgment. The County Attorney is present, and the attorney of the plaintiff notifies the County Commissioners that the assignment of this judgment was fraudulent, and that the above claimants are not owners of it, and that they must not pay it to Mr. Wood. See testimony of McNerney (pages 78 and 79), also testimony of Reorden (pages 77 and 78). But neither the Board of County Commissioners nor their vigilent attorney paid any attention to this notice, although it was a worthless judgment and could not be collected; they went right on paying it as fast as they could collect the two mills on the dollar, which was appropriated for the payment of this judgment. Its attorney, Parks, stood by and thought it was perfectly safe for them to do it. Another circumstance showing the interest of Mr. Parks on be halfof this defendant: Mr. Hulburd, as soon as he procured the assignment, and while in Denver, sent it to Parks at Leadville. He says that it was for Parks' approval. Parks says (page 114) he examined it to see if these parties dealing with this judgment were pur-

chasing in accordance with the judgment of those representing the county, and that he thought it sufficient and returned it to Hulburd at the Windsor Hotel in Denver. It is next heard from filed with the papers in this case. All this time, and while they are sending this assignment from Denver to Leadville and from Leadville to Denver, Mr. Higinbotham is trying to get them to tell him where it is. Mr. Higinbotham swears (page 31) "that he offered to show Parks the paper executed by Hulburd acknowledging the ownership of Baker; told Parks that it was assigned to Hulburd for collection purposes." Parks said it was not necessary. On page 32, while Higinbotham states that he told Parks that he had repeatedly written to Hulburd to get that assignment out of his hands and told him that if Hulburd undertook to dispose of it in any manner to state that Hulburd is not the owner, and that Parks said he would do it. Says that he told Parks to telegraph him at once if he heard of any attempt of Hulburd's to do anything with that paper, and Parks said "he would do that." Parks, however, denies that, and when asked "if he had such a conversation," says, "No, sir; don't recollect any such conversation. No reason why I should undertake any such obligation; none of my business. I could not serve two masters. I was representing the county and would not have agreed to represent him." (Meaning Higinbotham, I suppose.) He was representing the county, as he says, in a matter concerning which the county had nothing to do. On page 130, on cross-examination, he is asked the following question: "Did you consider it as a ques-

tion of professional ethics that you could not consistently notify Mr. Higinbotham if Mr. Hulburd was attempting to dispose of that judgment?" and he says in reply to that: "I consider that the position taken in Higinbotham's testimony is absurd; that I would not, in any instance, have undertaken anything in behalf of his claims against the county—not even that, and, from my standpoint, that would not have been legitimate for me to do, as the Board was so opposed to treating with him."

"Q. Do you think it is any more absurd to ask you to do that favor for him than it would be for you to refuse it? A. Yes, sir, I do. I imagined he always had a pique in his mind against me as acting for the county, because I had prevented the collection of that judgment in the Courts, and I always thought he carried himself in a way that showed he was not friendly towards me." But on page 107, he says: "Mr. Hulburd was very active in the interest of his clients to obtain payment of this judgment, and as attorney for the county he used to come to me and ask me if I could not intercede for him before the Board of County Commissioners, etc. And further, I have uniformly told him that as long as that judgment remained in the situation it was, I believed the Board of County Commissioners would not pay it until they were compelled to, etc., and I suppose he told his clients what I said. On page 108 he says that Hulburd told him of his purpose of getting an assignment to himself for the purpose of getting some money out of it in some way—levying a tax or in some way getting the Commissioners to act for him. Asked me to use my influence. I told him I had

no reason to oppose him on personal grounds; that I had no personal interest; that I should throw no obstacles in his way," etc. Thus it seems that he was perfectly willing to help Hulburd procure the money from the county, but he was not willing and it was not consistent with his duty as County Attorney to prevent Hulburd from stealing the judgment from the plaintiff. We think that the whole of Parks' testimony, as well as the extracts above quoted, confirm what Seeley says in his testimony (page 103), namely, "I always thought that Parks was in with it and got part of the $2,500. I was watching Parks as well as Hulburd." And further (on page 104)," that no one at the time was more anxious than Parks to make the trade, and Parks said Hulburd had borrowed some money from him, and he was to get that back." Here Seeley admits that he knew it was a steal by Parks and Hulburd; admits that he knew they were acting together to divide the money that they got for the judgment; admits that he knew Parks had something in it.

While it would be sufficient to show, as we think, the foregoing facts and circumstances that both Wood and Seeley had notice, both actual and constructive, that Hulburd was not the owner of this judgment, and had no right to sell it, there is another feature of the case equally important —that is, they were not purchasers for value. It is apparent to every one that the sale of the judgment for about 10 cents on the dollar, conceded to be a legal and binding judgment against one of the wealthiest counties in the State, is evidence of bad faith, and that there is something wrong in the

transaction; therefore, it becomes incumbent upon these defendants to show that this judgment is almost worthless. They are not satisfied with showing that it is worth 10 cents on the dollar, but they prove by Parks that it is only worth a thousand dollars. They undertake to prove by Wood the same thing, but he will not commit himself as to the value of the judgment in the face of the fact that he collected it with so little trouble, but says concerning the value of the judgment "that he thinks it would not sell in the market for any greater sum than $2,500." Wood undertakes to account for the lowness of the price by saying that this judgment was consolidated with the claim of someone else, and that this plaintiff did not own the whole judgment, and that he really purchased a judgment for $12,-210. But Parks contradicts that theory, and says (pages 111 and 112) that certain warrants had been issued to pay this judgment; that Hulburd had got hold of them and sold them to John Alfred, the man whom Seeley says was a "quorum of the Board of County Commissioners," and they were afterwards canceled by the Board, but he admits (page 131) that when he pleaded in the mandamus proceedings payment of part of this judgment by the issue and delivery to Hulburd of these warrants, the Court sustained a demurrer to his plea as to such payment. Wood also states (page 137) that they were talking about enforcing the payment in the Courts, and the county concluded to pay to Wood—seventy-five per cent of the judgment, principal and interest—and levy a tax of two mills on the dollar to pay the same as fast as the tax was

collected, which the county did, and paid the judgment as fast as the tax was collected. Parks also testifies that the judgment was a compromise judgment, all the illegal warrants having been thrown out, and it is apparent that the only interest that Alfred had in that judgment was his influence with the Board of Commissioners, because the warrants that he held the Court had already decided were absolutely worthless—this compromise being effected within a very few months after the time that Wood purchased the judgment. This is conceded by every witness who has undertaken to testify concerning the value of this judgment; that the county, before it was purchased by Seeley and Wood, was willing to pay it, if it was transferred to some person that the Board of County Commissioners did not dislike personally, yet these defendants, Parks, Hulburd, Wood and Seeley, the parties to this transaction, would have the Court believe that this judgment was worthless or was only worth ten cents on the dollar, because Messrs. Higinbotham and Barnes were personally obnoxious to the members of that Board. The county was willing to pay it. The county did pay it, and the only reason they pretend to urge that it was not worth its face and was not collectible was that the County of Lake had a large indebtedness at the time of the purchase of the judgment. That at the time of the levy of the tax for the payment of it, previous to the 22d of October, a change had taken place in the county's ability to pay its legal indebtedness, and that, by reason of some decisions made by the State Courts and the

United States Courts, the legal indebtedness of the county had been so reduced that the county was able to pay its legal indebtedness. It is thus, that Wood, Seeley and Parks account for the extraordinary change in the value of that judgment between the 19th day of June and the 22d day of October, but Parks admits that there was no decision of any Court during that time changing the liability of the county or lessening the amount of its legal indebtedness, and, therefore, that reason will not avail them. And how absurd and ridiculous it is for witness, for counsel, for anyone else to estimate the value of a judgment against a populous and wealthy county upon the whim of the individual members of the Board of County Commissioners of that county. It seems to us, in view of these facts, that the defendants were neither purchasers in good faith without notice or for value, all of which are essential to the maintenance of their title as against the plaintiff in this case. Of course, the parties to this conspiracy, except Hulburd, in general terms deny that there was any collusion or conspiracy between them. That is their general statement, but when they come to testify specifically concerning the facts of the transaction, the general statements are disproved.

In case of Peabody vs. Fenton, 3 Barb., Chancery Reports, page 451, the Court says (page 463) "that even in the case of negotiable paper, which has been lost by the owner or which has been obtained from him by fraud or larceny, the holder thereof cannot retain it as against the original owner, where he received it under circum-

stances which were calculated to throw a suspicion upon the right of the persons from whom he received it. Purchasing a security under such circumstances is gross negligence. Downer & Rogers purchased a bond and mortgage which, from the inquiries made by them, they must have known to be perfectly well secured, and upon which it appeared, by the endorsements, that $2,000 and the annual interest had been paid as the payments became due, they paying three-fourths of the actual value of these securities in unsalable goods, at forty per cent above their market value, and out of the usual course of business. The fact that the pretended owner of these securities was willing to make such a sacrifice and for articles for which he did not intend or wish to use himself, but which were to be sent to an auctioneer to be sold, was sufficient to satisfy any reasonable man that the vendor was selling what was not his own. Downer & Rogers ought not, therefore, to have made the purchase without inquiring from the original assignor whether Wycoff was, in fact, the real and *bona fide* owner of these securities. Their negligence in not making some inquiry on that subject was, at least, equal to if not greater than the negligence of the complainant in intrusting an assignment of the bond and mortgage to Fenton, as an escrow, to be delivered to Wycoff, the supposed purchaser, when the money should be paid by him."

The Court says in the same opinion:

"Again, to protect a party as a *bona fide* purchaser without notice, he must have acquired the

legal title, as well as an equitable right to the property."

To the same point is the case of Stockton vs. McDonald, 6 Hill, 93.

The case of Singer, Baer & Co. vs. Jacobs, 6 McCrary, U. S. Reps., 638, is in point upon the proposition that inquiry made by Seeley of Hulburd as to his right to sell that judgment is insufficient and shows negligence on the part of Seeley. There Jacobs was perpetrating a fraud upon his creditors. The Court says "that it is not enough that he is a *bona fide* purchaser for value; he must also be an innocent purchaser." There, as here, the purchaser felt that he was incurring some peril in purchasing this judgment from Hulburd, but he goes to Hulburd to make inquiry as to whether he had a right to perpetrate this fraud upon the plaintiff, and the Court says in that case "that when the facts and circumstances are such as to put a reasonable man upon inquiry, that obligation is not satisfied by an inquiry addressed to the chief actor in the suspected fraud, who has every motive for concealing the truth, when better and reliable sources of information are open to him."

In conclusion, therefore, we contend it must be apparent upon the conceded facts of this case that the defendants Wood and Seeley were not innocent purchasers or purchasers in good faith, for they had notice, or the equivalent of notice, that Hulburd was not the owner.

They are not purchasers for value within the meaning of the rule in a Court of equity. The appellant is not estopped to assert his title to the judgment, because the legal title did not pass by

the assignment, and their equity is not superior to the equity of appellant, and in no event, giving them the benefit of the law of estoppel, does their equity exceed the money they paid.

Respectfully submitted,

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